TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~334~~. 134

THE CITY OF ST. LOUIS, PLAINTIFF IN ERROR,

vs.

THE WIGGINS FERRY COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MISSOURI.

FILED DECEMBER 7, 1869.

SUPREME COURT OF THE UNITED STATES.

No. 334.

THE CITY OF SAINT LOUIS, PLAINTIFF IN ERROR,

vs.

THE WIGGINS FERRY COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MISSOURI.

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1 MISSOURI DISTRICTS, *sct:*

Pleas before the honorable the circuit court of the United States for the districts of Missouri, at the April term, A. D. 1869.

THE CITY OF ST. LOUIS, PLAINTIFF,
ags't
THE WIGGINS FERRY COMPANY, DEFENDANT.

Be it remembered that heretofore, to wit, on the 17th day of March, A. D. 1868, there were filed in the office of the clerk of the circuit court of the United States for the districts of Missouri the following four transcripts, to wit:

STATE OF MISSOURI, *County of St. Louis, ss:*

Be it remembered that heretofore, to wit, on the 27th day of August, A. D. 1867, there was filed in the office of the clerk of the circuit court of St. Louis County a petition, which is in the words and figures following, to wit:

Petition.

In the St. Louis circuit court, October term, 1867.

THE CITY OF ST. LOUIS, PLAINTIFF,
vs.
THE WIGGINS FERRY COMPANY, DEFENDANT.

The plaintiff says that the defendant is a corporation organized under and by virtue of the laws of the State of Illinois; that, on the first
2 Monday in October, 1861, said defendant was the owner of certain steamboats used in the transporting of freight and passengers to and from the port of St. Louis; that said boats were registered in the custom-house at the port of St. Louis, in conformity of the laws of the United States, and were at the time aforesaid of the value of seventy-five thousand dollars; that said defendant was at the same time the owner of a wharf-boat permanently located at the public landing in said city of St. Louis by permission of the corporate authorities thereof, upon which said wharf-boat said defendant has regularly paid taxes to the State of Missouri, and the city and county of St. Louis, without objecting thereto, and said steamboats regularly departed from and returned to said wharf-boat when in use and employed in the trade and business of the defendant; that the principal officers and agents of said company, including its president, vice-president, secretary, and treasurer, and all the board of directors thereof, were resident citizens of and residing in said city and county of St. Louis, State of Missouri, as aforesaid; that the principal office and place of business of said defendant was in said city, and all the property of said defendant, including the boats above mentioned, were in the possession of the said officers and agents, and the financial and busi-
3 ness affairs of said defendant were managed and controlled generally by its said agents and officers in said city of St. Louis; that the steamboats of said defendant were taxable by the laws of this State for State purposes, and by the charter of said city were likewise liable to be taxed for the support of the government thereof; that, on said first Monday of October, 1861, the city assessor of said city, in accordance with the charter and ordinances thereof, assessed the value of

said steamboats at said sum of seventy-five thousand dollars, and thereupon the proper corporate authorities of said city, in like conformity to the charter and ordinances thereof, levied a tax upon said steamboats according to said assessment for the support of the government of said city for the year 1862, at one per cent. for general purposes, amounting to the sum of seven hundred and fifty dollars, and a further tax of one-twentieth of one per cent., amounting to the sum of thirty-seven dollars and fifty cents, for sewer purposes, making the entire amount of the taxes so assessed and levied upon said boats the sum of seven hundred and eighty-seven dollars and fifty cents; that an account or bill of said taxes was made out by the proper city officers and placed in the hands of the duly authorized collector of said city for collection; that said collector demanded payment of defendant of said bill, which was re-
4 fused, and the same was returned to the comptroller of said city wholly due and unpaid, and still remains due and unpaid. The plaintiff therefore asks judgment against said defendant for the amount of said bill, and interest as allowed by law, & for costs.

C. C. SIMMONS,
Att'y for Pl'tff.

Whereupon a summons issued in the words and figures following, to wit:

Summons.

COUNTY OF ST. LOUIS, *ss:*

The State of Missouri to the sheriff of St. Louis County, greeting:

We command you to summon The Wiggins Ferry Company to appear before the judges of our circuit court on the first day of the next term thereof, to be held in the City of St. Louis, within and for the county of St. Louis, on the first Monday of October next, then and there to answer the complaint of The City of St. Louis as set forth in the annexed petition, and have you then & there this writ.

Witness Frank A. H. Schneider, clerk of our said court, with the seal thereof hereto affixed, at office in the city of St. Louis, this 27th day of August, in the year of our Lord eighteen hundred and sixty-seven.

[SEAL.] F. A. H. SCHNEIDER, *Clerk.*

Upon the back of which summons the sheriff made return as follows, to wit:

Sheriff's return.

Executed this writ in the St. Louis County this 30th day of August, 1867, by delivering a copy of the writ and petition as furnished by the clerk to Lewis V. Bogy, president of the Wiggins Ferry Company.

5 JOHN McNEIL, *Sh'ff,*
By LOUIS HOLY, *Dep'ty.*

And afterwards, on the 9th day of October, A. D. 1867, a petition for removal of cause to U. S. circuit court was filed, which is as follows, to wit:

Petition for removal to U. S. cir. court.

In the circuit court of St. Louis County.

THE CITY OF ST. LOUIS, PLAINTIFF,
vs.
THE WIGGINS FERRY COMPANY, DEFENDANT.

The petition of The Wiggins Ferry Company, defendant in the above cause, respectfully represents that the plaintiff is a citizen of the State of Missouri, and that this defendant is a corporation duly incorporated by the laws of the State of Illinois, and that the said corporation is and was at the institution of this suit a citizen of said State of Illinois; that the matter in dispute in said cause exceeds the sum of five hundred dollars, exclusive of costs. Wherefore said defendant prays that said suit and the proceedings herein may be removed from the circuit court of St. Louis County, in said State of Missouri, to the circuit court of the United States for the district of Missouri, and said defendant files herewith a bond with security, as required by law.

EWING & HOLLIDAY,
Attorneys for Def't.

And afterwards, on the 13th day of November, A. D. 1867, the following proceedings were had in said cause, to wit:

Cause removed.

THE CITY OF ST. LOUIS
vs.
THE WIGGINS FERRY COMPANY.

The petition for the removal of this cause being heard and fully
6 considered by the court, it is ordered, on the defendant's giving bond according to law, in the sum of two hundred dollars, to be approved by the court, the clerk of this court certify to the circuit court of the United States for the district of Missouri a complete transcript of the record and proceedings in this case. Bond filed and approved.

Which bond is in the words & figures following, to wit:

Bond.

Know all men by these presents that we, N. Mullikin, as principal, and Sam'l N. Holliday, as sureties, are held and firmly bound unto The City of St. Louis in the sum of two hundred dollars; for the payment of which we bind ourselves, our heirs, executors, and administrators, firmly by these presents. Witness our hands and seals this 9th day of October, 1867.

The condition of this bond, is such that whereas The City of St. Louis, a citizen of the State of Missouri, has instituted a suit in the circuit court of St. Louis County in said State, against The Wiggins Ferry Company, a company incorporated by the laws of the State of Illinois, and the said Wiggins Ferry Company has filed a petition in the said circuit court of St. Louis County, praying for a removal of said cause to the circuit court of the United States for the district of Missouri:

Now, if the said Wiggins Ferry Company shall, on the first day of the next session of the said circuit court of the United States, enter copies of the process against said ferry company, and at said session, on the first day thereof, enter their appearance to the suit of the said
7 City of St. Louis, then this bond shall be void; otherwise to remain in full force.

N. MILLIKIN. [SEAL.]
SAM'L N. HOLLIDAY. [SEAL.]

Bond filed and approved in open court, Nov. 13th, '67.
F. A. H. SCHNEIDER, *Clk.*

Certificate.

STATE OF MISSOURI,
County of St. Louis, ss:

I, John Lewis, clerk of the circuit court within and for the county of St. Louis, hereby certify the foregoing to be a full & complete transcript of the record & proceedings had in said cause as fully as the same remain on file in my office.

In testimony whereof I hereto set my hand and affix the seal of said court, at office, this 12th day of February, A. D. 1867.

[SEAL.] JNO. LEWIS, *Clerk.*

STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered that heretofore, to wit, on the 27th day of August, A. D. 1867, there was filed in the office of the clerk of the circuit court of St. Louis County a petition, which is in the words and figures following, to wit:

Petition.

In the St. Louis circuit court, October term, 1867.

THE CITY OF ST. LOUIS, PLAINTIFF,
vs.
THE WIGGINS FERRY COMPANY, DEFENDANT.

The plaintiff states that the defendant is a corporation organized under & by authority of the laws of the State of Illinois; that, on the first Monday in October, 1862, the defendant was the owner of
8 certain steamboats of the value of one hundred and six thousand dollars, used and employed by said defendant in the transporting of freight and passengers to and from the port of St. Louis; that said boats were registered in the custom-house at said port of St. Louis in conformity to the laws of the United States; that at the same time the defendant was the owner of a wharf-boat, permanently located at the public landing in said city by the permission of the corporate authorities thereof, and that said defendant has regularly paid such taxes as have been assessed by this State & the city and county of St. Louis; that said boats, when used and employed by the defendant, regularly departed from and returned to said wharf-boat; that the principal officers and agents of said company, including its president, vice-president, secretary, and treasurer, and all its directors, were resident citizens of the city and county of St. Louis, in this State; that the principal office

and place of business of said defendant was in said city, and its property, including its said boats and its financial and business affairs generally, were in the possession of, and were managed and controlled by, its said agents and officers in said city as aforesaid; that said boats were made taxable by the laws of this State for State purposes, and were also liable to be taxed for the support of the government of said city by the charter and ordinances thereof; that, on said first Monday in October, 1862, the city assessor of said city, in accordance with the laws & charter thereof, assessed the value of said boats at said
9 sum of one hundred and six thousand dollars, upon which the proper authorities of said , in like conformity to law, levied a tax for the support of the government of said city for the year 1863 of one per cent. for general purposes, amounting to the sum of one thousand and sixty dollars, and a further tax of one-tenth of one per cent., amounting to the sum of one hundred and six dollars, for sewer purposes, making the entire tax levied, as aforesaid, the sum of one thousand one hundred and sixty-six dollars; that a bill therefor was made out as required by ordinance of said city, and delivered to the proper collector thereof, who demanded payment of said bill of said defendant; but payment thereof was refused, and said bill was, as required by law, returned to the comptroller of said city, and still remains delinquent and unpaid. The plaintiff, therefore, alleges that she is entitled to judgment against said defendant for the amount of said bill, and she asks for the same, together with interest, as allowed by law, and costs of suit.

C. C. SIMMONS,
Att'y for Pl'tff.

Whereupon a summons issued in the words and figures following, to wit:

Summons.

COUNTY OF ST. LOUIS, *ss:*

The State of Missouri to the sheriff of St. Louis County, greeting:

We command you to summon The Wiggins Ferry Company to appear before the judges of our circuit court on the first day of the next
10 term thereof, to be held in the city of St. Louis, within and for the county of St. Louis, on the first Monday of October next, then and there to answer the complaint of The City of St. Louis set forth in the annexed petition, and have you then & there this writ.

Witness Frank A. H. Schneider, clerk of our said court, with the seal thereof hereto affixed, at office in the city of St. Louis, this 27th day of August, in the year of our Lord eighteen hundred and sixty-seven.

[SEAL.] F. A. SCHNEIDER, *Clerk.*

Upon the back of which summons the sheriff made return as follows, to wit:

Executed this writ in St Louis County this 30th day of August, 1867, by delivering a copy of the writ and petition as furnished by the clerk to Lewis V. Bogy, president of the Wiggins Ferry Company.

JOHN McNEIL, *Sheriff,*
By LOUIS HOLY, *Dep'y.*

And afterwards, on the 9th day of October, A. D. 1867, a petition for removal of cause to U. S. circuit court was filed, which is as follows, to wit:

Petition for removal to U. S. cir. court.

In the circuit court of St. Louis County.

THE CITY OF ST. LOUIS, PLAINTIFF,
vs.
THE WIGGINS FERRY COMPANY, DEFENDANT.

11 The petition of The Wiggins Ferry Company, defendant in the above cause, respectfully represents that the plaintiff is a citizen of the State of Missouri, and that this defendant is a corporation duly incorporated by the laws of the State of Illinois, and that the said corporation is, and was at the institution of this suit, a citizen of said State of Illinois; that the matter in dispute in said cause exceeds the sum of five hundred dollars, exclusive of costs. Wherefore said defendant prays that said suit, and the proceedings herein, may be removed from the circuit court of St. Louis County, in said State of Missouri, to the circuit court of the United States for the districts of Missouri, and said defendant files herewith a bond, with security, as required by law.

EWING & HOLLIDAY,
Att'ys for Def't.

And afterwards, on the 13th day of November, A. D. 1867, the following proceedings were had in this cause, to wit:

Cause removed.

THE CITY OF ST. LOUIS
vs.
THE WIGGINS FERRY COMPANY.

The petition for the removal of this cause being heard and fully considered by the court, it is ordered, on the defendant's giving bond according to law in the sum of two hundred dollars, to be approved by the court, the clerk of this court certify to the circuit court of the United States for the district of Missouri a complete transcript of the record and proceedings in this case. Bond filed and approved.

Which bond is in the words and figures following, to wit:

12 *Bond.*

Know all men by these presents that we, N. Mullikin, as principal, and Sam'l N. Holliday, as sureties, are held and firmly bound unto The City of St. Louis in the sum of two hundred dollars; for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Witness our hands and seals this 9th day of October, 1867.

The condition of this bond is such, that whereas The City of St. Louis, a citizen of the State of Missouri, has instituted suit in the circuit court of St. Louis County, in said State, against The Wiggins Ferry Company, a company incorporated by the laws of the State of Illinois, and the

said Wiggins Ferry Company has filed a petition in said circuit court of St. Louis County praying for the removal of said cause to the circuit court [to the circuit court] of the United States for the districts of Missouri:

Now, if the said Wiggins Ferry Company shall on the first day of the next session of said circuit court of the United States enter copies of the process against said ferry company, and at said session on the first day thereof enter their appearance to the suit of The City of St. Louis aforesaid, then this bond shall be void; otherwise to remain in full force.

N. MULLIKIN. [SEAL.]
SAM'L N. HOLLIDAY. [SEAL.]

Bond filed & approved in open court Nov. 13th, '67.

F. A. SCHNEIDER, *Clk.*

Certificate.

STATE OF MISSOURI,
County of St. Louis, ss:

13 I, John Lewis, clerk of the circuit court within and for the county of St. Louis, hereby certify the foregoing to be a full and complete transcript of the record and proceedings had in said cause, as fully as the same remain on file in my office.

In testimony whereof I hereto set my hand and affix the seal of said court, at office, this 10th day of February, A. D. 1867.

[SEAL.] JNO. LEWIS, *Clerk.*

STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered that heretofore, to wit, on the 27th day of August, A. D. 1867, there was filed in the office of the clerk of the circuit court of St. Louis County a petition in the words and figures following, to wit:

Petition.

In the St. Louis circuit court, October term, 1867.

THE CITY OF ST. LOUIS, PLAINTIFF,
vs.
THE WIGGINS FERRY COMPANY, DEFENDANT.

The plaintiff states that the defendant is a corporation, organized under the laws of the State of Illinois; that, on the first day of October, 1864, said defendant was the owner of certain steamboats used and employed in transporting passengers and freight to and from the port of St. Louis; that said boats at the time aforesaid were of the value of one hundred and ten thousand dollars, and were registered, according to the laws of the United States, in the custom-house at the port of St. Louis; that the defendant at the same time was the owner of a wharf-boat, permanently located at the public landing in said city, by

14 permission of the corporate authorities thereof, and the said steamboats of the defendant, when employed regularly, departed from and returned to said wharf-boat; that said wharf-boat has been regularly assessed for taxation by the proper authorities of this State, and of the city and county of St. Louis, and the taxes so levied and

assessed have been paid by said defendant: that the principal officers and agents of the defendant, including its president, vice-president, secretary, & treasurer, and board of directors, were at the time aforesaid citizens of this State, and residing in said city of St. Louis; that the principal office and place of business of said company was in said city, and all the property of the defendant, including said boats, and its financial & business affairs generally, were in the possession of, and managed and controlled by, its said agents and officers in said city; that the steamboats aforesaid were taxable by law for State purposes, and were subjects of taxation for the support of the government of said city by the charter and ordinances thereof; that, on said first Monday in October, 1864, the city assessor of said city, in accordance with the charter and ordinances thereof, assessed the value of said steamboats at the sum of one hundred and ten thousand dollars, and that upon said assessment there was levied by the corporate authorities of said
15 city, for the support of the government thereof for the year 1865, a tax of one per cent., for general purposes, amounting of eleven hundred dollars; & a tax of one-tenth of one per cent., for wharf and harbor purposes, amounting to the sum of one hundred and eleven dollars; and a tax of one-tenth of one per cent., for sewer purposes, amounting to one hundred and eleven dollars; and a tax of one-seventh of one per cent., for police purposes, amounting to one hundred and fifty-seven dollars and fourteen cents, making the whole of the taxes so assessed one thousand four hundred and seventy-seven dollars and fourteen cents; that a bill for said taxes was made out in accordance with the ordinances of said city, and delivered to the proper collector for collection; that payment of said bill was duly demanded of said defendant, which was refused, and said bill was returned to the comptroller of said city, delinquent and unpaid, and the same still remains due and unpaid. The plaintiff, therefore, asks for judgment against said defendant for said sum of fourteen hundred and seventy-seven dollars and fourteen cents, with interest as allowed by law, and for costs.

C. C. SIMMONS,
Att'y for Pl'ff.

Whereupon a summons issued in form and tenor following:

Summons.

COUNTY OF ST. LOUIS, *ss:*

16 The State of Missouri to the sheriff of St. Louis County, greeting:

We command you to summon The Wiggins Ferry Company to appear before the judges of our circuit court on the first day of the next term thereof, to be held in the city of St. Louis, within and for the county of St. Louis, on the first Monday of October next, then and there to answer the complaint of The City of St. Louis, as set forth in the annexed petition, and have you then and there this writ.

Witness Frank A. H. Schneider, clerk of our said court, with the seal thereof hereto affixed, at office in the city of St. Louis, this 27th day of August, in the year of our Lord eighteen hundred and sixty-seven.

[SEAL.] F. A. H. SCHNEIDER, *Clerk.*

Upon the back of which summons the sheriff made return as follows, to wit:

Sheriff's return.

Executed this writ in the county of St. Louis, this 30th day of August, 1867, by delivering a copy of the writ and petition as furnished by the clerk to Lewis V. Bogy, president of The Wiggins Ferry Company.

JOHN McNEIL, *Sheriff*,
By LOUIS HOLY, *Dep'y.*

And afterwards, on the 9th day of October, A. D. 1867, a petition for removal of cause to U. S. circuit court was filed, which is as follows, to wit:

17 *Petition for removal to U. S. cir. c't.*

In the circuit court of St. Louis County.

THE CITY OF ST. LOUIS, PLAINTIFF,
vs.
THE WIGGINS FERRY COMPANY, DEFENDANT.

The petition of The Wiggins Ferry Company in the above cause respectfully represents that the plaintiff is a citizen of the State of Missouri, and that this defendant is a corporation, duly incorporated by the laws of the State of Illinois, and that the said corporation is, and was at the institution of this suit, a citizen of said State of Illinois; that the matter in dispute in said cause exceeds the sum of five hundred dollars, exclusive of costs. Wherefore said defendant prays that said suit, and the proceedings herein, may be removed from the circuit court of St. Louis County, in said State of Missouri, to the circuit court of the United States for the districts of Missouri, and said defendant files herewith a bond, with security as required by law.

EWING & HOLLIDAY,
Att'ys for Def't.

And afterwards, on the 13th day of November, A. D. 1867, the following proceedings were had in said cause, to wit:

Cause removed.

THE CITY OF ST. LOUIS
vs.
THE WIGGINS FERRY COMPANY.

The petition for the removal of this cause being heard and fully considered by the court, it is ordered, on the defendant's giving bond
18 according to law, in the sum of two hundred dollars, to be approved by the court, the clerk of this court certify to the circuit court of the United States for the districts of Missouri a complete transcript of the record and proceedings in this cause. Bond filed and approved.

Which bond is in the words and figures following, to wit:

Bond.

Know all men by these presents that we, N. Mullikin, as principal, and Samuel N. Holliday, as sureties, are held and firmly bound unto The City of St. Louis in the sum of two hundred dollars, for the payment of

which, well & truly to be made, we bind ourselves, our heirs, executors, and administrators, firmly by these presents. Witness our hands and seals this 9th day of October, 1867.

The condition of this bond is such, that whereas The City of St. Louis, a citizen of the State of Missouri, has instituted a suit in the circuit court of St. Louis County, in said State, against The Wiggins Ferry Company, a company incorporated by the laws of the State of Illinois, and the said Wiggins Ferry Company has filed a petition in the said circuit court of St. Louis County praying for the removal of said cause to the circuit court of the United States for the districts of Missouri:

Now, if the said Wiggins Ferry Company shall, on the first day of the next session of the said circuit court of the United States,
19 enter copies of the process against said ferry company, and at said session, on the first day thereof, enter their appearance to the suit of the said City of St. Louis, then this bond shall be void; otherwise to remain in full force.

N. MULLIKIN. [SEAL.]
SAM'L N. HOLLIDAY. [SEAL.]

Filed and approved in open court Nov. 13th, '67.
F. A. H. SCHNEIDER, *Clk.*

Certificate.

STATE OF MISSOURI,
County of St. Louis, ss:

I, John Lewis, clerk of the circuit court within and for the county of St. Louis, hereby certify the foregoing to be a full and complete transcript of the record & proceedings had in said cause, as fully as the same remain on file in my office.

In testimony whereof I hereunto set my hand and affix the seal of said court at office this 10th day of February, A. D. 1867.

[SEAL.] JNO. LEWIS, *Clerk.*

STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered that heretofore, to wit, on the 27th day of August, A. D. 1867, there was filed in the office of the clerk of the circuit court of St. Louis County a petition, which is in the words and figures following, to wit:

20 *Petition.*

In the St. Louis circuit court, Oct. term, 1867.

THE CITY OF ST. LOUIS, PLAINTIFF,
vs.
THE WIGGINS FERRY COMPANY, DEFENDANT.

The plaintiff states that the defendant is a corporation organized under & by virtue of the laws of the State of Illinois; that, on the first Monday of October, 1865, said defendant was the owner of certain steamboats, used & employed in the transporting of freight and passengers to and from the port of St Louis, which said boats were registered in the custom-house at the port of St. Louis in conformity to the laws of the

United States, and were of the value of one hundred thousand dollars; that said defendant was at the same time the owner of a wharf-boat permanently located at the public landing in said city by permission of the corporate authorities thereof, and said boats regularly departed from and returned to said wharf-boat when engaged in the trade & business of the defendant; and that said wharf-boat has been regularly taxed by the State of Missouri, and by the city and county of St. Louis, and that such taxes have been paid by the defendant without objection. The plaintiff says, further, that the principal officers and agents of the defendant, including its president, vice-president, secretary, and treasurer, and its board of directors, all were, at the time aforesaid,
21 citizens of and residing in this State, and in the city and county of St Louis; that the principal office and place of business of the defendant was in said city, and the property of the defendants, including said boats, and all its financial and business affairs generally, were in the possession of, and were managed and controlled by, its said officers and agents in said city of St. Louis; that said steamboats were taxable by the laws of this State for State purposes, and were also subject to taxation for the support of the government of said city of St. Louis by the charter and ordinances thereof; that on said first Monday of October, 1865, the city assessor of said city, in accordance with the charter and ordinances thereof, assessed the value of said steamboats at the said sum of one hundred thousand dollars, and thereupon the proper corporate authorities of said city, in like conformity to law, levied a tax on said boats for the support of the government of said city of one per cent. on the assessed value thereof, for general purposes, amounting to the sum of one thousand dollars; and a tax of one-tenth of one per cent. on said value for wharf and harbor purposes, amounting to one hundred dollars; and a like tax of one-twentieth of one per cent. for sewer purposes, amounting to fifty dollars; and a further tax of one-fourth
22 of one per cent. for police purposes, amounting to two hundred and fifty dollars, making the entire sum of said taxes fourteen hundred dollars; that a bill therefor was made out and placed in the hands of the proper collecting officer of said city, who demanded payment of said bill of said defendant, but the defendant refused to pay said bill, or any part thereof, and the same was returned to the comptroller for said city delinquent & unpaid, and the same still remains unpaid. The plaintiff says that she has acted in all respects as authorized by law; that she is entitled to recover said demands, and she therefore asks judgment for said sum of fourteen hundred dollars, and interest as allowed by law, & costs.

C. C. SIMMONS,
Att'y for Pl'tff.

Whereupon a summons issued in the words and figures following, to wit:

Summons.

COUNTY OF ST. LOUIS, *ss:*

The State of Missouri to the sheriff of St. Louis County, greeting:

We command you to summon The Wiggins Ferry Company to appear before the judges of our circuit court on the first day of the next term thereof, to be held in the city of St. Louis, within and for the county of St. Louis, on the first Monday of October next, then and there

to answer the complaint of The City of St. Louis, as set forth in the annexed petition, and have you then and there this writ.

23 Witness Frank A. H. Schneider, clerk of our said court, with the seal thereof hereto affixed, at office in the city of St. Louis, this 27th day of August, in the year of our Lord eighteen hundred and sixty-seven.

[SEAL.] F. A. H. SCHNEIDER, *Clerk.*

Upon the back of which summons the sheriff made return as follows, to wit:

Sheriff's return.

Executed this writ in the county of St. Louis this 30th day of August, 1867, by delivering a copy of the writ and petition as furnished by the clerk to Lewis V. Bogy, president of The Wiggins Ferry Company.

JOHN McNEIL, *Sh'ff,*
By LOUIS HOLY, *Dep'ty.*

And afterwards, on the 9th day of October, A. D. 1867, a petition for removal of cause to U. S. circuit court was filed, which is as follows; to wit:

Petition for removal to U. S. cir. c't.

In the circuit court of St. Louis County.

THE CITY OF ST. LOUIS, PLAINTIFF,
vs.
THE WIGGINS FERRY COMPANY, DEFENDANT.

The petition of The Wiggins Ferry Company, defendant in the above cause, respectfully represents that the plaintiff is a citizen of the State of Missouri, and that this defendant is a corporation duly incorporated by the laws of the State of Illinois, and that the said corporation is and was, at the institution of this suit, a citizen of said State of Illinois; that the matter in dispute in said cause exceeds the sum of five

24 hundred dollars, exclusive of costs. Wherefore said defendant prays that said suit and the proceedings herein may be removed from the circuit court of St. Louis County, in said State of Missouri, to the circuit court of the United States for the districts of Missouri, and said defendant files herewith a bond with security, as required by law.

EWING & HOLLIDAY,
Att'ys for Def't.

And afterwards, on the 13th day of November, A. D. 1867, the following proceedings were had in this cause, to wit:

Cause removed.

THE CITY OF ST. LOUIS
vs.
THE WIGGINS FERRY COMPANY.

The petition for the removal of this cause being heard & fully considered by the court, it is ordered, on the defendant's giving bond, ac-

cording to law, in the sum of two hundred dollars, to be approved by the court, the clerk of this court certify to the circuit court of the United States for the district of Missouri, a complete transcript of the record and proceedings in this case. Bond filed and approved.

Which bond is in the words and figures following, to wit:

Bond.

Know all men by these presents that we, N. Mullikin, as principal, and Sam'l N. Holliday, as sureties, are held and firmly bound unto The City of St. Louis in the sum of two hundred dollars; for the pay-
25 ment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administraters, jointly and severally, by these presents. Witness our hands and seals this 9th day of October, 1867.

The condition of this bond is such, that whereas The City of St Louis, a citizen of the State of Missouri, has instituted a suit in the circuit court of St. Louis County in said State against The Wiggins Ferry Company, a company incorporated by the laws of the State of Illinois, and the said Wiggins Ferry Company has filed a petition in the said circuit court of St. Louis County, praying for the removal of said cause to the circuit court of the United States for the districts of Missouri:

Now, if the said Wiggins Ferry Company shall, on the first day of next session of the said circuit court of the United States for said districts of Missouri, enter copies of the process against said Ferry Company, and, at said session, on the first day thereof, enter their appearance to the suit of said City of St. Louis, then this bond shall be void; otherwise to remain in full force.

N. MULLIKIN. [SEAL.]
SAM'L N. HOLLIDAY. [SEAL.]

Bond filed & approved in open court, Nov. 13th, '67.
F. A. H. SCHNEIDER, *Clk.*

Certificate.

STATE OF MISSOURI, *County of St. Louis, ss:*

I, John Lewis, clerk of the circuit court within and for the county of St. Louis, hereby certify the foregoing to be a full & complete
26 transcript of the record & proceedings had in said cause, as fully as the same remain on file in my office.

In testimony whereof I hereto set my hand and affix the seal of said court at office this 10th day of February, A. D. 1867.

[SEAL.] JNO. LEWIS, *Clerk.*

And afterwards, to wit, on the 31st day of March, in said year, the following additional transcript was filed in the office of the clerk of the circuit court of the United States for the districts of Missouri aforesaid; which transcript is in the words and figures following, to wit:

STATE OF MISSOURI, *County of St. Louis, ss:*

Be it remembered that heretofore, to wit, on the 10th day of October, A. D. 1865, there was filed in the office of the clerk of the land court of St. Louis County a transcript from Justice Charles Picker and papers attached thereto; which transcript and papers are in the words and figures following, to wit:

Transcript.

CITY OF ST. LOUIS
vs.
WIGGINS FERRY CO.—H. L. CLARK, SEC'Y, L. V. Bogy, pres'd't. } No. 51, March 7, 1865.

Before Justice Charles Picker:

Plaintiff's agent files for suit a tax bill for the year 1864 for the
27 sum of $3,575 00 and damages, and summons were issued by justice same day, on March 24th, 1865, delivering the same to Constable Albert Odenwaelder, returnable April 14th, 1865, at 6-9 o'cl. a. m. Summons were duly served and returned by said constable March 27th, 1864, having summoned the president and secretary of said Wiggins Ferry Co. And now, on said 14th day of April, comes the representative of the city as well as the said Lewis V. Bogy & Henry L. Clark, appearing for The Wiggins Ferry Co., and both parties were ready for trial; whereupon the justice heard the evidence of the case and the proofs on both sides, and finally rendered judgment for the city, and against The Wiggins Ferry Company, for the above-mentioned amount, together with all interest and damages thereon, and costs of this suit; but the parties representing the said Wiggins Ferry Company come, & affidavit and bond for appeal was filed in the sum of seven thousand dollars, and said bond was approved by justice, who thereupon adjudges that all the original papers in this case, together with a true transcript of the proceedings in the same, be sent to the St. Louis County land court, to the next term of the same.

STATE OF MISSOURI,
County of St. Louis, ss:

I, the undersigned justice of the peace within & for the county as foresaid, hereby certify the foregoing to be a full and true transcript of the proceedings in the case of The City of St. Louis vs. The
28 Wiggins Ferry Company, as the same are of record on my docket, and that the papers hereto attached are original.

Given under my hand this 25th day of July, A. D. 1865.

CHARLES PICKER,
Justice of the Peace.

[5-ct. U. S. R. st.]

Tax bill.

Wiggins Ferry Company to The City of St. Louis, taxes for 1864.

Description.									Boundaries.			
City block.	Addit'n block.	No. of house.	Street.	Feet front.	Feet deep.	Lot Nos.	Acres.	Survey & addit'n.	North.	East.	South.	West.
4			Front.									

	Dollars.	Cents.
Gold & silver plate		
Pianos		
Furnitures		
Pleasure carriages		
Horses & mules		
Cattle		
Clocks & watches		
Money		
Bonds, notes, & bills		
St. boat stock	275 000	00
Machinery		
Jewelry		
Total of personal property	$275, 000	00

	Dollars.	Cents.
Valuation of r. estate		
" improvements		
" personal p'p'y	275, 000	00
Total valuation	275, 000	00
General tax, 1 p'r c't	2, 750	
Bounty tax, 1-10 of 1 p. c't	275	
Sewer tax, do	275	
Police tax, do	275	
Park tax		
Poll tax		
Amount of tax bill	$3, 575	00

ST. LOUIS, ——— 186 .

Received payment.

——— ———

Collector of the ——— Ward.

29 Endorsed:

Payment of the within tax bill demanded by me ——— ——— on the ——— day of ———, A. D. 1864.

——— ———

Collector of the ——— Ward.

Sworn to before me this ——— day of ———, A. D. 1864.

Summons.

The State of Missouri to any constable of St. Louis Township, in St. Louis County, greeting:

We command you to summon Wiggins Ferry Company—Henry L. Clark, secretary, & Lewis V. Bogy, president of said company—to appear before the undersigned, one of the justices of the peace of St. Louis Township, in St. Louis County, on the 14th day of April, 1865, at 6-9 o'clock in the forenoon, at his office in the said township, to answer the complaint of The City of St. Louis—demand, $3,575 00, for delinquent taxes for 1864, & damages—and subpœna defendant as witness for the plaintiff.

Given under my hand this 24 day of March, 1865.

CHARLES PICKER, *Justice.*

Constable's return.

Executed this writ in St. Louis Township, March 27th, '65, by reading the same to the within-named defendant, Henry L. Clark, secretary

of The Wiggins Ferry Company, & further by delivering a true copy thereof to Lewis Bogy, president of The Wiggins Ferry Company.

A. ODENWAELDER, *Const.*,
By H. KOEHLER, *Dep'ty.*

30 *Affidavit & appeal bond.*

CITY OF ST. LOUIS, PLAINTIFF,
vs.
WIGGINS FERRY COMPANY, DEFENDANT.

Before Justice Charles Picker:

This day personally appeared before me, Charles Picker, a justice of the peace in and for the county of St. Louis, in the State of Missouri, Lewis V. Bogy, president of said Wiggins Ferry Comp., who, being duly sworn, upon his oath says that the application for an appeal in the above-entitled case is not made for vexation or delay, but because he believes the appellant is injured by the judgment of the justice.

LEWIS V. BOGY.

Sworn to & subscribed before me this 14th day of April, 1865.

CHARLES PICKER,
Justice of the Peace.

[5-ct. stamp.]

I, the undersigned, Lewis V. Bogy, as president, and Lewis V. Bogy, as individual, acknowledge ourselves indebted to The City of St. Louis in the sum of seven thousand dollars, to be void upon this condition:

Whereas Lewis V. Bogy, president of The Wiggins Ferry Company, has appealed from the judgment of Charles Picker, a justice of the peace, in an action between The City of St. Louis as plaintiff, and The Wiggins Ferry Company as defendant:

Now, if on such appeal the judgment of the justice be affirmed, or if, on the trial anew in the St. Louis County land court, judgment be given against the appellant, and he shall satisfy such judgment,
31 or if his appeal shall be dismissed and he shall pay the judgment of the justice, together with the costs of appeal, the recognizance shall be void.

WIGGINS FERRY CO.,
By HENRY L. CLARK, *Secr'y.* [SEAL.]
LEWIS V. BOGY. [SEAL.]

Attest this 14th day of April, 1865.

CHARLES PICKER, *Justice.*

And afterwards, on the 13th day of June, A. D. 1866, a paper was filed, which paper is in the words and figures following, to wit:

Agreed statement of facts.

In the St. Louis circuit court, June, 1866.

THE CITY OF ST. LOUIS
vs.
THE WIGGINS FERRY COMPANY. } Appeal from justice court.

The parties to the above-entitled cause, by their attorneys, hereby agree to submit the same for the decision of the court upon the following statement of facts:

It is agreed that defendant is an incorporated company, chartered by the laws of the State of Illinois, under which it has acted since its incorporation in 1853; that all the steamboats owned by the company, being the same which have been assessed and taxed as shown by the tax bill upon which this suit is brought, are registered in the custom-house at the port of St. Louis, as required by the laws of the United States; that all the real estate of the company is located in Illinois, and all the boats belonging to it, when not employed, are laid up on the Illinois side of the Mississippi River; and that all the warehouses and workshops for storing the tackle and fixtures and for repairing
32 said boats are also located in Illinois, and that the engineer, superintendent, carpenters, and other employees of the company, also reside in that State; that said company own wharf-boats, which are located at the public landing in the city of St. Louis, and upon which it pays taxes to the State of Missouri, and to the county and city of St. Louis, and also wharf dues required by the ordinances of said city; that all other property and effects of said company, including its boats, have been regularly assessed for taxation by the State, county, and municipal authorities of Illinois, and that the taxes so assessed and levied have been paid by the company, and, except as above stated, the company has not heretofore paid taxes in this State; that the boats of the company run regularly, at nearly all hours of the night and day, between their points of landing at the wharf in the city of St. Louis, and in East St. Louis, in the State of Illinois, as ferry-boats, for the transportation of freight and passengers across the Mississippi River; that, when the taxes for which this suit is brought were levied, the boats of the company were prohibited, by an ordinance of said city of St. Louis regulating ferries generally, from remaining at the landing in said city for a longer time than ten minutes at any one time, except when necessary for taking in cargo and passengers; that the officers and managers of said company consist of a president, vice-presi-
33 dent, and secretary, who also acts as the treasurer, and five directors, all of whom reside in the city of St. Louis, in this State, and a superintendent who resides in Illinois; that about three-fourths of said company is held and owned in the city of St. Louis, and the remainder by persons who are residents of the State of Ohio, New York, and perhaps elsewhere; the company have an office in the State of Illinois, and another in this State, in the city of St. Louis, which are used for similar purposes in the transaction of its business, such as collecting and disbursing its revenues, for the selling of tickets, and making settlements with its officers, agents, and employees; that the internal revenue tax paid by the company to the United States is assessed and paid in the State of Illinois.

Either party may read, as if the same were in evidence, such parts of the laws of Illinois, Missouri, and the charter and ordinances of the city of St. Louis, as are applicable to the case. And if the court shall be of the opinion that the city had due authority to assess and levy the tax sued for, that such assessment was valid, and, if so authorized and valid, such assessment was made in accordance with the laws of this State, then judgment may be rendered for the plaintiff for the amount of the bill sued upon, with interest, as provided for by law; otherwise judgment is to be rendered for the defendant. Either party reserves the right to appeal, or take writ of error to the supreme court of this State.

34 C. C. SIMMONS, *Att'y for Pl'ff.*
E. B. EWING, *Att'y for Def't.*

And on the 14th day of February, A. D. 1868, a petition for removal cause to U. S. circuit court was filed; which petition is as follows, viz:

Petition for removal cause to U. S. cir. c't.

In the circuit court of St. Louis County, State of Mo.

THE CITY OF ST. LOUIS, PLAINTIFF,
vs.
THE WIGGINS FERRY COMPANY, DEFENDANT.

The petition of The Wiggins Ferry Company, defendant in the above cause, respectfully represents that the plaintiff is a citizen of the State of Missouri, and that the defendant is a corporation duly incorporated by the laws of the State of Illinois, and that said corporation is, and was at the institution of said suit, a citizen of said State of Illinois; that the matter in dispute in said cause exceeds the sum of five hundred dollars, exclusive of costs; that this defendant has reason to believe, and does believe, that from prejudice and local influence it will not be able to obtain justice in the circuit court of St. Louis County, in said State of Missouri. Wherefore said defendant prays that said suit and the proceedings therein be removed from the circuit court of St. Louis County aforesaid to the circuit court of the United States for the districts of Missouri; and said defendant files herewith a bond with security as required by law.

35 The Wiggins Ferry Company,
By JOSEPH BROWN, *Sup't.*

STATE OF MISSOURI,
County of St. Louis:

Joseph Brown, superintendent of The Wiggins Ferry Company, defendant in the above-entitled cause, on his oath states that the foregoing petition and the matters and things therein stated are true.

JOSEPH BROWN.

Sworn to & subscribed before me this 13th day of February, 1868.
[SEAL.] BERNHARD N. STERNBERG,
Notary Public for and within St. Louis County, Mo.

And afterwards, on the 6th day of March, A. D. 1868, being the February term of said circuit court, the following proceedings were had in said cause, to wit:

Cause removed.

Friday, March 6th, 1868.

CITY OF ST. LOUIS
vs.
WIGGINS FERRY COMPANY.

Now, at this day, the petition in this cause heretofore filed, for removal cause to the United States circuit court, being submitted to the court, and the court having heard and fully considered the same, it is therefore ordered by the court that the clerk of this court certify to the circuit court of the United States for the district of Missouri a complete transcript of the record and proceedings in this cause.

36 *Certificate.*

STATE OF MISSOURI,
County of St. Louis, ss:

I, John Lewis, clerk of the circuit court within and for the county of St. Louis, hereby certify the foregoing to be a true transcript of the record and proceedings (as required) had in the above-entitled cause as fully as the same remain of record and on file in my office.

In testimony whereof I have hereunto set my hand, with the seal of the circuit court thereto attached, at office this 24th March, A. D. 1868.

[SEAL.] JOHN LEWIS, *Clk.*

And afterwards, at a regular stated term of said United States circuit court, begun and held at the city of St. Louis, at the April term thereof, 1868, on Friday, the 24th day of April, in the year aforesaid, the following proceedings took place in this case, to wit:

THE CITY OF ST. LOUIS, PLAINTIFF, *ag'st* THE WIGGINS FERRY COMPANY, DEFENDANT. } Removed from St. Louis circuit court.

THE CITY OF ST. LOUIS, PLAINTIFF, *ag'st* THE WIGGINS FERRY COMPANY, DEFENDANT. } Removed from St. Louis circuit court.

THE CITY OF ST. LOUIS, PLAINTIFF, *ag'st* THE WIGGINS FERRY COMPANY, DEFENDANT. } Removed from St. Louis circuit court.

THE CITY OF ST. LOUIS, PLAINTIFF, *ag'st* THE WIGGINS FERRY COMPANY, DEFENDANT. } Removed from St. Louis circuit court.

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THE CITY OF ST. LOUIS, PLAINTIFF, *ag'st* THE WIGGINS FERRY COMPANY, DEFENDANT. } Removed from St. Louis circuit court.

This day came the parties by attorneys, and, on motion, it is ordered that the above-named five cases be, and the same are hereby, now consolidated for the purpose of trial, the said parties by their attorneys consenting thereto. And thereupon the plaintiff, by attorneys, files its declaration herein in accordance with the rules of this court, said declaration, by consent, embracing the causes of action in the said five cases so as above consolidated.

Which declaration is in the words and figures following, to wit:

Declaration.

UNITED STATES OF AMERICA,
Districts of Missouri, ss:

In the circuit court of the United States for the districts of Missouri.

THE CITY OF ST. LOUIS, PLAINTIFF,
vs.
THE WIGGINS FERRY COMPANY, DEFENDANT. } April term, 1868.

The City of Saint Louis, which is a corporation duly incorporated under the laws of the State of Missouri, and a citizen of said State, complains of The Wiggins Ferry Company, which is a corporation created by the laws of the State of Illinois, and a citizen of said State, of a plea that the said defendant render to the said plaintiff the sum of eight thousand four hundred and five dollars and sixty-four cents, lawful money of the United States, which said defendant owes and unjustly detains from said plaintiff:

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For that whereas heretofore, to wit, on the first Monday of the month of October, A. D. eighteen hundred and sixty-one, the said defendant was the owner of certain steamboats of the value of seventy-five thousand dollars; that said steamboats were used in the transportation of freight and passengers to and from the port of said plaintiff; that said steamboats were duly registered in the custom-house at said port, in conformity to the laws of the United States; that said defendant was the owner of certain wharf-boats located permanently at the wharf of said plaintiff by the permission of its corporate authorities; that said defendant paid taxes upon said wharf-boats to said plaintiff, the County of Saint Louis, and State of Missouri; that said steamboats departed from and returned to said wharf-boats in the course of the usual & ordinary business of said defendant; that at the date aforesaid the chief officers of said defendant, including the president, vice-president, secretary, treasurer, board of directors, & general snperintendent, were residents and citizens of said plaintiff & State of Missouri; that the principal office and place of business of said defendant was located within the corporate limits of said plaintiff; that all of the property of said defendant, including said steamboats, was in the possession and under the control of said officers; that its general and financial business affairs were managed and its corporate seal kept & used by

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said officers within said limits aforesaid; that at said date the said steamboats were taxable for the purposes of revenue for the State of Missouri by virtue of a certain act of the general assembly of said State, approved March 27, 1861, and providing, among other things, for the taxation of shares of stock and all other interests held in steamboats, keel-boats, wharf-boats, and all other vessels; that said steamboats were subject to taxation by the said plaintiff for the support of its municipal government, in accordance with a certain other act of said general assembly, approved March 3, 1851, which provided, among other things, that the mayor and city council of said plaintiff should have power within said city, by ordinance, to levy and collect taxes not exceeding one per centum upon all the property made taxable by law for State purposes; that in accordance with said last-mentioned act the mayor & city council of said plaintiff, on the fifth day of July, 1861, did adopt an ordinance, No. 4872, which provided for the assessment of

property within said plaintiff for the purposes of its taxation; that in conformity with said ordinance the president of the board of assessors created thereby did, on said first Monday of October, 1861, assess properly and correctly the value of said steamboats at said sum of seventy-five thousand dollars; that thereafter, to wit, on the 6th day of
40 June, 1862, by ordinance No. 3341, adopted at said date, the said mayor and common council did levy a tax of one per centum on said steamboats at their said valuation, which was then levied for the support and general purposes of the government of said plaintiff, and amounted to the sum of seven hundred and fifty dollars; that, by virtue of a certain other act of said general assemby, approved March 14, 1859, which, among other things, empowered the said mayor & city council to levy a tax for sewer purposes on all property within said plaintiff made taxable by law for State purposes, the said mayor & common council, on said sixth day of June, 1862, by said ordinance No. 3341, did levy a tax for sewer purposes of one-twentieth of one per centum on said steamboats at their said valuation, which amounted to the sum of thirty-seven dollars and fifty cents; that the said taxes thus assessed and levied for said year 1862 amounted in the aggregate to the sum of seven hundred and eighty-seven dollars and fifty cents; that under and by virtue of said act of March, 1859, the said defendant became liable to said plaintiff for the payment of said sum; that in accordance with the said act, and ordinance No. 4879 of said plaintiff, approved July 9, 1861, which, among other things, provided for the
41 collection of taxes and other revenues of said plaintiff, a true bill of said taxes was made out by the proper officer of said plaintiff, and by him placed in the hands of the officer designated by law for the collection of the same; that in due season thereafter the said last-mentioned officer demanded from said defendant the payment of said bill of taxes, which by the terms of said statutes & ordinances the said defendant was bound to pay; but, nevertheless, the said defendant, not regarding the said statutes and ordinances for such case made and provided, did not pay said bill or satisfy said plaintiff's claim for said taxes, as said defendant was bound to do, but, on the contrary, failed, neglected, and refused to pay said bill, contrary to the form of the statute for such case made and provided; that thereupon, to wit, on the first Monday of November, in said year 1862, said bill was returned to the city comptroller, an officer of said plaintiff, as unpaid and delinquent, and now remains unpaid; that from said last-mentioned date the said defendant became liable to said plaintiff for interest upon the amount of said tax bill at the rate of one per centum per month, by virtue of ordinance No. 5070 of said plaintiff, approved February 7, 1863, which related to the collection of delinquent taxes, and provided that all bills remaining unpaid on the first day of April, 1863, would bear interest at the rate aforesaid from the date of their return to the comptroller as de-
42 linquent; and that, by reason of the premises aforesaid, and by virtue of the said statutes and ordinances, an action hath accrued to said plaintiff to demand and have from said defendant the said sum of seven hundred and eighty-seven dollars and fifty cents, the amount of said bill for the taxes of 1862, together with interest on said amount at the said rate of twelve per cent. per annum from said first Monday of November, A. D. 1862.

2nd. And whereas also heretofore, to wit, on the first Monday of the month of October, A. D. eighteen hundred & sixty-two, the defendant was the owner of certain other steamboats, to wit, the steamboats aforesaid, of the value of one hundred and six thousand dollars; that said steamboats

were used by defendant for the transportation of freight and passengers to and from the port of said plaintiff; that they were duly registered in the custom-house at said port, in conformity with the laws of the United States; that at said date the said defendant was the owner of certain wharf-boats located permanently at the wharf of said plaintiff with the permission of its corporate authorities; that the defendant paid taxes upon said wharf-boats to the plaintiff, the county of Saint Louis, and the State of Missouri; that said steamboats departed from and returned
43 to said wharf-boats in the course of the trade and business of said defendant; that at said date the principal officers of said defendant, as mentioned in the preceeding count, were residents and citizens of said plaintiff, and State of Missouri; that the principal office and place of business of said defendant was within the corporate limits of said plaintiff; that all of the property of said defendants, including said steamboats, was in the possession and under the control of its said officers, and its business affairs managed, and its corporate seal kept and used by said officers within said limits of said plaintiff; that at the said date aforesaid the said steamboats were taxable for the purposes of revenue for the State of Missouri by virtue of a certain act of the general assembly of said State, approved March 27, 1861, which provided, among other things, for the taxation of shares of stock and all other interests held in steamboats, keel-boats, wharf-boats, and all other vessels; that said steamboats were subject to taxation by the said plaintiff for the support of its municipal government, in accordance with a certain other act of said general asssembly, approved March 3d, 1851, which provided, among other things, that the mayor and common council of plaintiff should have power within the city, by ordinance, to levy and collect taxes, not exceeding one per centum, upon all property made taxable by law for State purposes; that, in accordance with said act last afore-
44 said, on the fifth day of July, 1861, the said mayor and common council did adopt an ordinance, No. 4872, which provided for the assessment of property within the city for the purposes of its taxation; that in accordance with said ordinance the board of assessors created thereby did, on said first Monday of October, 1862, assess properly and correctly the value of said steamboats at said sum of one hundred and six thousand dollars; that thereafter, to wit, on the seventeenth day of June, 1863, by ordinance No. 5124, approved at said date, the said mayor & common council did levy a tax for the current year of one per centum on said steamboats at their said valuation, which said tax was thus levied for the support and general purposes of the government of said plaintiff, and amounted to the sum of one thousand and sixty dollars; that, by virtue of a certain other act of said general assembly, approved March 14, 1859, which, among other things, authorized the said mayor and common council of said plaintiff to levy a tax for sewer purposes on all property within the city made taxable by law for State purposes, the said authorities on said thirteenth day of June, 1863, by said ordinance No. 5124, did levy a tax for the current year on said steamboats, at their said valuation, of one-tenth of one per centum, which amounted to the sum of one hundred and six dollars; that said taxes thus levied on said steamboats for said year 1863
45 amounted in the aggregate to the sum of eleven hundred and sixty-six dollars; that by virtue of said act of March 14, 1859, the said defendant became liable to said plaintiff for the payment of said sum; that in accordance with the said act and ordinance No. 4879 of said plaintiff, approved July 9, 1861, which, among other things, provided for the collection of taxes and other revenue of said plaintiff, a

true bill of said taxes was made out by the proper officer of said plaintiff, and by him placed in the hands of the officer designated by law for the collection of the same; that in due season thereafter the said officer last aforesaid demanded from said defendant the payment of said bill of taxes then duly assessed and levied, and which, by the terms of said statutes & ordinances, the said defendant was bound to pay; but, nevertheless, the said defendant, not regarding the said statutes and ordinances for such case made and provided, did not pay said bill or satisfy plaintiff's claim for said taxes as defendant was bound to do, but, on the contrary, failed, neglected, and refused to pay said bill, contrary to the form of the statute for such case made & provided; that thereupon, to wit, on the first Monday of the month of November of the year 1863, the said bill was returned to the city comptroller, an officer of said plaintiff, as unpaid and delinquent, and now remains unpaid; that from the said first Monday of November, 1863, the date of said return,
46 the said defendant became liable to said plaintiff for interest upon the amount of said bill at the rate of one per centum per month, in accordance with a certain ordinance, No. 5070, of said plaintiff, adopted February 7th, 1863, and ordinance No. 5153, amendatory thereof, adopted July 15, 1863, which provided, among other things, that interest should be charged at said rate on all unpaid tax bills from the date of their return to the comptroller as delinquent; and that by reason of the premises aforesaid, & by virtue of the said statutes & ordinances, an action hath accrued to said plaintiff to have and demand from said defendant the said sum of eleven hundred and sixty-six dollars, the amount of said bill for the taxes of 1863, together with interest on said amount, at the rate of twelve per cent. per annum from said first Monday of November, A. D. 1863.

3d. And whereas, also, on the first Monday of October, A. D. eighteen hundred and sixty-three, at the districts aforesaid, the said defendant was the owner of certain other steamboats, to wit, the steamers aforesaid, of the value of two hundred & seventy-five thousand dollars; that said steamboats were used in the transportation of freight and passengers to and from the port of Saint Louis, said plaintiff, and
47 were duly registered at the custom-house of said port, in conformity with the laws of the United States; that at said date the defendant was the owner of certain wharf-boats, which were permanently located at the wharf of plaintiff with the consent of the corporate authorities thereof; that said defendant paid taxes upon said wharf-boats to the State of Missouri, the county of Saint Louis, and said plaintiff; that said steamboats landed at and departed from said wharf-boats in the course of the ordinary business of said defendant; that the principal officers of said defendant, as aforesaid, were residents and citizens of said plaintiff, and said State; that the principal office and place of business of said defendant was within the corporate limits of said plaintiff; that all of the property of said defendant, including said steamboats, was in the possession & under the control of said officers, & defendant's business managed, and its corporate seal kept, and used by them within said limits; that at said date the said steamboats were taxable for the purposes of the revenue of the State of Missouri by virtue of a certain act of the general assembly of said State, approved March 27, 1861, which provided, among other things, for the taxation of shares of stock
48 and all other interests held in steamboats, keel-boats, wharf-boats, and all other vessels; that at said date said steamboats were subject to taxation by said plaintiff for the support of its municipal government in accordance with a certain other act of said general as-

sembly, approved March 3, 1851, which authorized the mayor & common council of said plaintiff within the city by ordinance to levy and collect taxes, not exceeding one per centum on all property made taxable by law for State purposes; that in accordance with said last-mentioned act, on the fifth day of July, 1861, the said mayor & council adopted an ordinance, No. 4872, which provided for the assessment of property within the city for the purposes of its taxation; that in conformity with said ordinance the president of the board of assessors created thereby did, on said first Monday of October, 1862, assess properly and correctly the value of said steamboats at said sum of two hundred and seventy-five thousand dollars; that thereafter, to wit, on the fourth day of June, 1864, by ordinance No. 5320, the said mayor & common council did levy, for the current year on said boats at their said valuation, a tax of one per centum, which was thus levied for the support of the municipal government of plaintiff, and amounted to the sum of two thousand seven hundred and fifty dollars; that by virtue of a certain other act of said general assembly, approved February 6, 1864, which directed the mayor and common council of plaintiff to levy a tax for the encouragement of enlistments in the volunteer service of the United States, the said authorities did, on said fourth of June, 1864, by said ordinance No. 5320, levy a tax for military bounties on said steamboats at their said valuation of one-tenth of one per cent., which amounted to the sum of two hundred and seventy-five dollars; that by virtue of a certain other act of said general assembly, approved March 14, 1859, which, among other things, authorized the mayor and common council of plaintiff within the city to levy a tax for sewer purposes on all property made taxable by law for State purposes, the said mayor and council of said plaintiff, on said fourth of June, 1864, by said ordinance No. 5320, did levy a tax for sewer purposes on said steamboats at their said valuation of one-tenth of one per centum, which amounted to the sum of two hundred and seventy-five dollars; that in accordance with a certain other act of said general assembly, approved February 5, 1864, which authorized said mayor & council within the city to levy a tax for the payment of police on all property made taxable by law for State purposes, the said mayor and council, on said fourth day of June, 1864, by said ordinance No. 5320, did levy on said steamboats at their said valuation a tax for police fund of one-tenth of one per centum, which amounted to the sum of two hundred and seventy-five dollars; that said taxes thus levied for the year 1864 amounted to the aggregate to the sum of three thousand five hundred and seventy-five dollars; that by virtue of said act of March 14, 1859 the said defendant became liable to the said plaintiff for the payment of said sum; that in accordance with the said act & ordinance No. 4879 of said plaintiff, approved July 9, 1861, which, among other things, provided for the collection of taxes & other revenue of said plaintiff, a true bill of said taxes was made out by the proper officer of said plaintiff, and by him placed in the hands of the officer designated by law for the collection of the same; that in due season thereafter the said officer last aforesaid demanded from said defendant the payment of said bill of taxes thus duly assessed and levied, & which by the terms of said statutes & ordinances the said defendant was bound to pay, but nevertheless the said defendant, not regarding the said statutes and ordinances for such case made and provided, did not pay said bill or satisfy plaintiff's claim for said taxes, as defendant was bound to do, but, on the contrary, failed, neglected, and refused to pay said bill, contrary to the form of the statute for such case made and provided; that thereupon, to wit, on the first

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Monday of the month of November, 1864, the said bill was returned to the city comptroller, an officer of said plaintiff, as unpaid and delinquent, and now remains unpaid; that from said first Monday of November, 1864, the date of said return, the said defendant became liable to said plaintiff for interest upon the amount of said bill at the rate of one per centum per month, in accordance with a certain ordinance No. 5070 of said plaintiff, approved February 7, 1863, and ordinance No. 5153, amendatory thereof, approved July 15, 1863, which provided, among other things, that interest should be charged at said rate on all unpaid tax bills from the date of their return to the comptroller as aforesaid; and that by reason of the premises aforesaid, and by virtue of the said statutes and ordinances, an action hath accrued to said plaintiff to have & demand from said defendant said sum of three thousand five
52 hundred & seventy-five dollars, the amount of said bill of taxes for the year 1864, together with interest on said amount at the rate of twelve per centum per annum from said first Monday of November, A. D. 1864.

4th. And whereas also heretofore, to wit, on the first Monday of October, A. D. eighteen hundred & sixty-four, the said defendant was the owner of certain other steamboats, to wit, the steamboats aforesaid, of the value of one hundred and ten thousand dollars, at the districts aforesaid; that said steamboats were used in the transportation of freight and passengers to & from the port of Saint Louis, said plaintiff; that said steamboats were duly registered in the custom-house at said port, in conformity with the laws of the United States; that said defendant was the owner of certain wharf-boats, which were located permanently at the wharf of said plaintiff with the consent of its corporate authorities; that at said time said defendant paid taxes on said wharf-boats to the State of Missouri, the county of Saint Louis, and said plaintiff; that in the course of the ordinary business of said defendant, the said steamboats departed from and returned to said wharf-boats; that
53 the principal officers of said defendant, including its president, vice-president, secretary, treasurer, & board of directors, & general superintendent, were residents and citizens of said plaintiff and said State of Missouri; that the principal office and place of business of said defendant was located within the corporate limits of said plaintiff; that all the property of said defendant, including said steamboats, was in the possession and under the control of said officers, and that its general business affairs were managed and its corporate seal kept and used by said officers within said corporate limits aforesaid; that, at said date aforesaid the said steamboats were taxable for the purposes of revenue for the State of Missouri by virtue of a certain act of the general assembly of said State, approved February 4, 1864, which provided, among other things, for the taxation of shares of stock and all other interests held in steamboats, keel-boats, wharf-boats, and all other vessels; that at said date said steamboats were subject to taxation by said plaintiff for the support of its municipal government, in accordance with a certain other act of said general assembly, approved March 3, 1851,
54 which provided, among other things, that the mayor & city council of plaintiff should have power within the city, by ordinance, to levy and collect taxes not exceeding one per centum upon all property made taxable by law for State purposes; that in accordance with said last-mentioned act, on the sixth day of September, 1864, the said mayor & council adopted an ordinance, No. 5453, which provided for the assessment of property within the city for the purposes of its taxation; that in conformity with said ordinance the president of the board of assess-

ors created thereby did, on said first Monday of October, 1864, assess properly and correctly the value of said steamboats at said sum of one hundred & ten thousand dollars; that thereafter, to wit, on the twenty-fourth day of May, 1865, by ordinance No. 5578, adopted on said day, the said mayor and council did levy on said steamboats at their said valuation a tax for the current year of one per centum, which said tax was thus levied for the support & general purposes of the municipal government of said plaintiff, and amounted to the sum of eleven hundred dollars; that by virtue of a certain other act of said general assembly, approved March 14, 1859, which, among other things, authorized said mayor & city council within the city to levy a tax for sewer purposes on all property made taxable by law for State purposes, the said mayor and council did on said twenty-fourth day of May, 1865, by said ordinance No. 5578, levy on said steamboats at their said valuation a tax for the current year for sewer purposes of one-tenth of one per centum, which amounted to the sum of one hundred and eleven dollars; that by virtue of a certain other act of said general assembly, approved February 16, 1865, which, among other things, authorized said mayor & city council within the city to levy a tax for harbor and wharf purposes on all property made taxable by law for State purposes, the said mayor & council on said day of May, 1865, by said ordinance No. 5578, did levy on said steamboats, at their said valuation, a tax for harbor & wharf purposes for the current year of one-tenth of one per centum, which amounted to the sum of one hundred and eleven dollars; that by virtue of a certain other act of said general assembly, approved February 5, 1864, which, among other things, authorized said mayor & city council of plaintiff within the city to levy a tax for police purposes on all property made taxable by law for State purposes, the said mayor & council on said day of May, 1865, by said ordinance No. 5578, for the current year did levy on said steamboats at their said valuation a tax for police purposes of one-seventh of one per centum, which amounted to the sum of one hundred and fifty-seven $\frac{14}{100}$ dollars; that said taxes thus levied upon said steamboats for said year 1865 amounted in the aggregate to the sum of one thousand four hundred and seventy-seven $\frac{14}{100}$ dollars; that by virtue of said act of March 14, 1869, the said defendant became liable to said plaintiff for the payment of said sum; that in accordance with said act and said ordinance No. 5453, approved September 6, 1864, which, in addition to the assessment of property, provided for the collection of taxes and other revenue of said plaintiff, a true bill of said taxes was made out by the proper officer of said plaintiff, and by him placed in the hands of the officer designated by law for the collection of the same; that in due season thereafter the said officer last aforesaid demanded from said defendant the payment of said bill of taxes thus duly assessed & levied, and which by the terms of said statutes and ordinances the said defendant was bound to pay, but, nevertheless, the said defendant, not regarding the said statutes & ordinances for such case made and provided, did not pay said bill or satisfy plaintiff's claim for said taxes, as defendant was bound to do, but, on the contrary failed, neglected, and refused to pay said bill, contrary to the form of the statute for such case made & provided; that thereupon, to wit, on the first Monday of the month of November, 1865, the said bill was returned to the city comptroller, an officer of said plaintiff, as unpaid and delinquent, and now remains unpaid; that from said first Monday of November, 1865, the date of said return, the said defendant became liable to said plaintiff for interest upon the amount of said bill at the rate of one per cent. per

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month, in accordance with a certain ordinance, No. 5070, of said plaintiff, approved February 7, 1863, and ordinance No. 5153, amendatory thereof, approved July 15, 1863, which provided, among other things, that interest should be charged at said rate on all unpaid tax bills from the date of their return to the comptroller as aforesaid; and by reason of the premises aforesaid, and by virtue of said statutes and ordinances, an action hath accrued to said plaintiff to demand and have from said defendant the said sum of one thousand four hundred and seventy-seven $\frac{14}{100}$ dollars, the amount of said bill of taxes for the year 1865, to-
58 gether with interest on said amount at the rate of twelve per centum per annum from the said first Monday of November, A. D. 1865.

5th. And whereas also heretofore, to wit, on the first Monday of October, A. D. eighteen hundred and sixty-five, the said defendant, at the districts aforesaid, was the owner of certain other steamboats, to wit, the steamboats aforesaid, of the value of one hundred thousand dollars; that said steamboats were used in the transportation of freight and passengers to and from the port of St. Louis, said plaintiff, and were duly registered in the custom-house at said port, in conformity with the laws of the United States; that said defendant was the owner at said time of certain wharf-boats, which were located permanently at the wharf of plaintiff with the permission of its corporate authorities; that at said time said defendant paid taxes on said wharf-boats to the State of Missouri, the county of Saint Louis, and said plaintiff; that in the course of the ordinary business of said defendant the said steamboats departed from and returned to said wharf-boats; that the principal officers of said defendant, including its president, vice-president, secretary, treasurer, board of directors, and general superintendent, were residents and citizens of said plaintiff, and
59 said State of Missouri; that the principal office and place of business of said defendant was located within the corporate limits of said plaintiff; that all of the property of said defendant, including said steamboats, was in the possession and under the control of said officers, and that its general business affairs were managed, and its corporate seal kept and used by said officers within said limits aforesaid; that at said date aforesaid the said steamboats were taxable for the purposes of revenue for the State of Missouri, by virtue of a certain act of the general assembly of said State, approved February 4, 1864, which provided, among other things, for the taxation of shares of stock & all other interests held in steamboats, wharf-boats, keel-boats, and all other vessels; that at said date the said steamboats were subject to taxation by said plaintiff for the support of its municipal government, in accordance with a certain other act of said general assembly, approved March 3, 1851, which provided, among other things, that the mayor & city council of plaintiff should have power within the city, by ordinance, to levy and collect taxes not exceeding one per centum upon all property made taxable by law for State purposes; that in accordance with said last-mentioned act, on the sixth day of Sep-
60 tember, 1864, the said mayor and council adopted an ordinance, No. 5453, which provided for the assessment of property within the city for the purposes of its taxation; that in conformity with said ordinance the president of the board of assessors created thereby did on said first Monday of October, 1865, assess properly and correctly the value of said steamboats at said sum of one hundred thousand dollars; that thereupon, to wit, on the twenty-fifth day of June, 1866, by ordinance No. 5851, adopted on said day, the said mayor & council did levy

on said steamboats at their said valuation tax for the current year of one per centum, which said tax was thus levied for the support and general purposes of the municipal government of said plaintiff, and amounted to the sum of one thousand dollars; that by virtue of a certain other act of said general assembly, approved February 16, 1865, which, among other things, authorized the said mayor & council within the city to levy a tax for harbor and wharf purposes on all property made taxable by law for State purposes, the said mayor & council, on said day of June, 1866, by said ordinance No. 5851, did levy for the current year on said steamboats at their said valuation a tax
61 for harbor & wharf purposes of one-tenth of one per centum, which amounted to the sum of one hundred dollars; that by virtue of a certain other act of said general assembly, approved March 14, 1859, which, among other things, authorized said mayor & council of plaintiff within the city to levy a tax for sewer purposes on all property made taxable by law for State purposes, the said mayor & council of said plaintiff, on said day of June, 1866, by said ordinance No. 5851, did levy for the current year on said steamboats at their said valuation a tax for sewer purposes of one-twentieth of one per centum, which amounted to the sum of fifty dollars; that by virtue of a certain other act of said general assembly, approved March 15, 1866, which, among other things, authorized the said mayor & council within the city to levy a tax for police purposes on all property made taxable by law for State purposes, the said mayor & council on said day of June, 1866, by said ordinance No. 5851, did levy on said steamboats at their said valuation a tax for police purposes for the current year of
62 one-fourth of one per centum, which amounted to the sum of two hundred & fifty dollars; that said taxes thus levied on said steamboats for the year 1866 amounted in the aggregate to the sum of fourteen hundred dollars; that by virtue of said act of March 14, 1859, the said defendant became liable to said plaintiff for the payment of said sum; that in accordance with said act and said ordinance No. 5453, approved September 6, 1864, which, in addition to the assessment of property, provided for the collection of taxes and other revenue of said plaintiff, a true bill of said taxes was made out by the proper officer of said plaintiff, and by him placed in the hands of the officer designated by law for its collection; that in due season thereafter the said officer last aforesaid demanded from said defendant the payment of said bill of taxes thus duly assessed and levied, and which, by the terms of said statutes & ordinances, the said defendant was bound to pay, but, nevertheless, the said defendant, not regarding the said statutes & ordinances for such case made and provided, did not pay said bill or satisfy plaintiff's claim for said taxes, as defendant was bound to do, but, on the contrary, failed, neglected, and refused to pay said bill, contrary to the form of the statute for such case made & pro-
63 vided; that thereupon, to wit, on the first Monday of the month of November, 1866, the said bill was returned to the city comptroller, an officer of said plaintiff, as unpaid and delinquent, and now remains unpaid; that from said first Monday of November, 1866, the date of said return, the said defendant became liable to said plaintiff for interest upon the amount of said bill at the rate of one per centum per month, in accordance with a certain ordinance, No. 5070, of said plaintiff, approved February 7, 1863, and ordinance No. 5153, amendatory thereof, approved July 15, 1863, which provided, among other things, that interest should be charged at said rate on all unpaid tax-bills from the date of their return to the comptroller as aforesaid; and

that by reason of the premises aforesaid, and by virtue of said statutes & ordinances, an action hath accrued to said plaintiff to demand & have from said defendant the sum of fourteen hundred dollars, the amount of said bill of taxes for said year 1866, together with interest on said amount at the rate of twelve per centum per annum from the said first Monday of November, A. D. 1866.

Wherefore, by reason of the premises recited in the various counts aforesaid, and of said defendant's neglect & refusal to pay the said several tax bills specified therein, the said plaintiff has been
64 damaged in the sum of fifty thousand dollars, and therefore brings this suit.

C. C. SIMMONS,
KRUM, DECKER & KRUM,
Attorneys for Plaintiff.

And afterwards, at said regular stated term of said circuit court, begun and holden as aforesaid, the following further proceedings took place in these cases on Thursday, the 30th day of April, in said year, to wit:

THE CITY OF ST. LOUIS, PLAINTIFF,
ag'st
THE WIGGINS FERRY CO'Y, DEFENDANT. } Removed from St. Louis circuit court.

This day comes the defendant by attorney, and files its plea of nil debit to the action of plaintiff herein against it.

Which plea of nil debit is in the words and figures following, to wit:

Plea—nil debit.

In the United States circuit court, districts of Missouri.

THE WIGGINS FERRY CO.
ats.
THE CITY OF ST. LOUIS. } April term, 1868.

The said defendant, by Whittelsey and Ewing & Holliday, its attorneys, comes & defends the wrong and injury, when, &c., and says that it does not owe the sums of money above demanded, or any part thereof, in manner and form as the said plaintiff hath above thereof complained against him, and of this said defendant puts itself on the country, &c.

65 WHITTELSEY, with EWING & HOLLIDAY
Att'ys P. D.

And afterwards, at said regular stated term of said circuit court, begun & holden as aforesaid, the following further proceedings took place in these cases on Monday, the 4th day of May, in said year, to wit:

Agreement filed to waive jury.

THE CITY OF ST. LOUIS
ag'st
THE WIGGINS FERRY CO'Y. } Removed from St. Louis circuit court.

THE CITY OF ST. LOUIS
ag'st
THE WIGGINS FERRY CO'Y. } Removed from St. Louis circuit court.

THE CITY OF ST. LOUIS *ag'st* THE WIGGINS FERRY CO'Y. } Removed from St. Louis circuit court.

THE CITY OF ST. LOUIS *ag'st* THE WIGGINS FERRY CO'Y. } Removed from St. Louis circuit court.

THE CITY OF ST. LOUIS *ag'st* THE WIGGINS FERRY CO'Y. } Removed from St. Louis circuit court.

This day come the parties by attorneys, and file an agreement in writing waiving a jury in these cases, & consenting and agreeing that said cases be tried by the court without the intervention of a jury.

Which waiver of a jury is in the words and figures following, to wit:

66 *Jury waived.*

CITY OF ST. LOUIS *v.* WIGGINS FERRY CO. }

Jury waived.

C. C. SIMMONS, *P. Q.*
WHITTELSEY, *P. D.*

And afterwards, at a regular stated term of said circuit court, begun and holden at the city of St. Louis aforesaid, (to wit, at the April term, A. D. 1869,) the following further proceedings took place in these cases on Wednesday, the 12th day of May, 1869.

Case called for trial.

THE CITY OF ST. LOUIS, PLAINTIFF, *ag'st* THE WIGGINS FERRY CO'Y, DEFENDANT. } Removed from St. Louis circuit court.

THE CITY OF ST. LOUIS, PLAINTIFF, *ag'st* THE WIGGINS FERRY CO'Y, DEFENDANT. } Removed from St. Louis circuit court.

THE CITY OF ST. LOUIS, PLAINTIFF, *ag'st* THE WIGGINS FERRY CO'Y, DEFENDANT. } Removed from St. Louis circuit court.

THE CITY OF ST. LOUIS, PLAINTIFF, *ag'st* THE WIGGINS FERRY CO'Y, DEFENDANT. } Removed from St. Louis circuit court.

THE CITY OF ST. LOUIS, PLAINTIFF, *ag'st* THE WIGGINS FERRY CO'Y, DEFENDANT. } Removed from St. Louis circuit court.

This day come the parties by attorneys, and an agreement having been heretofore filed, signed by said attorneys, waiving a jury in
67 these cases as consolidated, and consenting and agreeing that

the same may be heard by the court without the intervention of a jury, and the cases, as consolidated, being regularly called for trial, and both parties being ready, the said cases so consolidated were in part heard, and, not being concluded, further proceedings are continued until to-morrow morning.

And afterwards, at said regular stated term of said circuit court, begun and holden as aforesaid, the following further proceedings took place in these cases on Thursday, the 13th day of May, in said year, to wit:

Hearing continued.

THE CITY OF ST. LOUIS, PLAINTIFF, *ag'st* THE WIGGINS FERRY CO'Y, DEFENDANT. } Removed from St. Louis circuit court.

THE CITY OF ST. LOUIS, PLAINTIFF, *ag'st* THE WIGGINS FERRY CO'Y, DEFENDANT. } Removed from St. Louis circuit court.

THE CITY OF ST. LOUIS, PLAINTIFF, *ag'st* THE WIGGINS FERRY CO'Y, DEFENDANT. } Removed from St. Louis circuit court.

THE CITY OF ST. LOUIS, PLAINTIFF, *ag'st* THE WIGGINS FERRY CO'Y, DEFENDANT. } Removed from St. Louis circuit court.

THE CITY OF ST. LOUIS, PLAINTIFF, *ag'st* THE WIGGINS FERRY CO'Y, DEFENDANT. } Removed from St. Louis circuit court.

68 This day again come the parties by their respective attorneys, and the hearing of these cases being resumed, the said cases were further heard by the court, sitting as a jury, but the hearing thereof not being concluded at the hour of adjournment, further proceedings herein are continued until to-morrow morning.

And afterwards, on the next day, (being Friday,) the following further proceedings took place in these cases, to wit:

THE CITY OF ST. LOUIS, PLAINTIFF, *ag'st* THE WIGGINS FERRY CO'Y, DEFENDANT. } Removed from St. Louis circuit court.

THE CITY OF ST. LOUIS, PLAINTIFF, *ag'st* THE WIGGINS FERRY CO'Y, DEFENDANT. } Removed from St. Louis circuit court.

THE CITY OF ST. LOUIS, PLAINTIFF, *ag'st* THE WIGGINS FERRY CO'Y, DEFENDANT. } Removed from St. Louis circuit court.

THE CITY OF ST. LOUIS, PLAINTIFF, *ag'st* THE WIGGINS FERRY CO'Y, DEFENDANT. } Removed from St. Louis circuit court.

THE CITY OF ST. LOUIS, PLAINTIFF, *ag'st* THE WIGGINS FERRY CO'Y, DEFENDANT. } Removed from St. Louis circuit court.

This day again come the parties herein by attorneys, and the hearing of these cases being further heard, & the same being concluded, said cases were thereupon submitted to the court, hearing the same
69 without the intervention of a jury, for the verdict to be rendered thereon, and the court here, not being fully advised in the premises, took time to consider of its verdict to be rendered herein.

And afterwards, at said regular stated term of said circuit court, begun and holden as aforesaid, the following judgments were rendered in these cases on Saturday, the 15th day of May, in said year, to wit:

Judgment.

THE CITY OF ST. LOUIS, PLAINTIFF, *ag'st* THE WIGGINS FERRY CO'Y, DEFENDANT. } Removed from St. Louis circuit court, consolidated.

This day again come the parties herein by attorneys, and this case having been tried by the court without the intervention of a jury, and the same having been heretofore submitted, and the court, now being fully advised in the premises, finds the issues joined herein for the defendant, and orders that judgment be entered in this case in accordance with such finding on first count as consolidated.

It is, therefore, now considered by the court that the plaintiff take nothing by its writ, and that the defendant, The Wiggins Ferry Company, go hence without day, &c., and that it recover against the plaint-
70 iff, The City of St. Louis, the costs in this behalf expended, and that execution or a fee bill be issued therefor.

Judgment.

THE CITY OF ST. LOUIS, PLAINTIFF, *ag'st* THE WIGGINS FERRY CO'Y, DEFENDANT. } Removed from St. Louis circuit court, consolidated.

This day again come the parties herein by attorneys, and this case having been tried by the court without the intervention of a jury, and the same having been heretofore submitted, and the court being now fully advised in the premises, finds the issues joined herein for the defendant, and orders that judgment be entered in this case in accordance with such finding on second count as consolidated.

It is, therefore, now considered by the court that the plaintiff take nothing by its writ, and that the defendant, The Wiggins Ferry Company, go hence without day, &c., and that it recover against the plaintiff, The City of St. Louis, the costs in this behalf expended, and that execution or a fee bill be issued therefor.

Judgment.

THE CITY OF ST. LOUIS, PLAINTIFF, *ag'st* THE WIGGINS FERRY CO'Y, DEFENDANT. } Removed from St. Louis circuit court, consolidated.

This day again come the parties by attorneys, and this case
71 having been tried by the court without the intervention of a jury, and the same having been heretofore submitted, and the

court, being now fully advised in the premises, finds the issues joined herein for the defendant, and orders that judgment be entered in this case in accordance with such finding on third count as consolidated.

It is, therefore, now considered by the court that the plaintiff take nothing by its writ, and that the defendant, The Wiggins Ferry Company, go hence without day, &c., and that it recover against the plaintiff, The City of St. Louis, the costs in this behalf expended, and that execution or a fee bill be issued therefor.

Judgment.

THE CITY OF ST. LOUIS, PLAINTIFF, *ag'st* THE WIGGINS FERRY CO'Y, DEFENDANT. } Removed from St. Louis circuit court, consolidated.

This day again come the parties herein by attorneys, and this case having been tried by the court without the intervention of a jury, and the same having been heretofore submitted, and the court, being now fully advised in the premises, finds the issues joined herein for the defendant, and orders that judgment be entered in this case in accordance with such finding on fourth count as consolidated.

It is, therefore, now considered by the court that the plaintiff take nothing by its writ, and that the defendant, The Wiggins Ferry
72 Company, go hence without day, &c., and that it recover against the plaintiff, The City of St. Louis, the costs in this behalf expended, and that execution or a fee bill be issued therefor.

Judgment.

THE CITY OF ST. LOUIS, PLAINTIFF, *ag'st* THE WIGGINS FERRY CO'Y, DEFENDANT. } Removed from St. Louis circuit court, consolidated.

This day again come the parties herein by attorneys, and this case having been tried by the court without the intervention of a jury, and the same having been heretofore submitted, and the court, being now fully advised in the premises, finds the issues joined herein for the defendant, and orders that judgment be entered in this case in accordance with such finding on fifth count as consolidated.

It is, therefore, now considered by the court that the plaintiff take nothing by its writ, and that the defendant, The Wiggins Ferry Company, go hence without day, &c., and that it recover against the plaintiff, The City of St. Louis, the costs in this behalf expended, and that execution or a fee bill be issued therefor.

And afterwards, at said regular stated term of said circuit court, begun and holden as aforesaid, the following further proceedings took place in these cases on Monday, the 17th day of May, A. D. 1869:

73 THE CITY OF ST. LOUIS, PLAINTIFF, *ag'st* THE WIGGINS FERRY CO'Y, DEFENDANT. } Removed from St. Louis circuit court, as consolidated.

This day come the parties by attorneys, and the attorney for plaintiff files a motion to set aside the finding by the court in this case and for a new trial herein upon the grounds and for the reasons set forth in said

motion, and the court, having examined the same, and being advised in the premises, now orders that said motion be, and the same is hereby, overruled.

Which motion is in the words and figures following, to wit:

Motion for new trial.

THE CITY OF ST. LOUIS
vs.
THE WIGGINS FERRY COMPANY.

The plaintiff in the above-entitled cause comes and moves the court for a new trial on the following ground, to wit:

"That the court erred in its declaration of law upon the facts established in evidence in this case."

KRUM, DECKER & KRUM,
C. C. SIMMONS, *Att'ys for Pl'ff.*

And afterwards, on the same day, the following further proceedings took place in these cases, to wit:

74 THE CITY OF ST. LOUIS, PLAINTIFF, *ag'st* THE WIGGINS FERRY CO'Y, DEFENDANT, } Removed from St. Louis circuit court, as consolidated.

This day comes again the plaintiff by attorney, and files a bill of exceptions herein, which, being examined and approved by the court, is signed, sealed, and ordered to be made a part of the record in these cases.

Which bill of exceptions is in the words and figures following, to wit:

Bill of exceptions.

THE CITY OF ST. LOUIS
vs.
THE WIGGINS FERRY CO.

Be it remembered that upon the trial of this cause by the court, without the intervention of a jury, the following facts and none other were established in evidence, to wit:

Finding of the court.

THE CITY OF ST. LOUIS
vs.
THE WIGGINS FERRY COMPANY.

The defendant in this cause, being a corporation under the laws of Illinois, had its principal office in the city of St. Louis, Missouri, where the president, vice-president, treasurer, superintendant, & other chief officers resided, and where the ordinary business meetings of the directors were held, & where the seal of the corporation was kept.

75 Its minor officers, such as engineers & pilots on its ferry-boats, resided in Illinois, opposite the city of St. Louis, where its real

estate was situated, also its warehouse & some other property. The ferry-boats of the defendant, when not in actual use, were laid up by the Illinois shore, and were forbidden by a general ordinance of the city of St. Louis regulating ferries & ferry-boats to remain at the St. Louis wharf or landing longer than ten minutes at a time. The city of St. Louis exacted from the defendant as a ferry license $3,000 per annum for a portion of the time included in the declaration in this case, & $4,000 per year for the residue of said time, which sums were duly paid. The said city permitted the defendant to erect or place landing or wharf-boats at its wharf or public landing for the convenience and exclusive use of the ferry-boats of the defendant, & for which wharf-boats said city charged the defendant a stipulated annual wharfage, which was duly paid. The defendant was duly assessed and taxed for the value of its said wharf-boats, located within the limits of the plaintiff, in addition to the ferry-license & wharfage aforesaid. The city, in addition to said taxes, wharfage, & license dues aforesaid, all of which the defendant paid, assessed against the defendant the taxes sued for upon the
76 value of the ferry-boats used by the defendant in carrying freight and passengers from the Illinois to the St. Louis shore, and vice versa, & for the taxes so assessed caused regular tax bills to be made out & issued in conformity with the charter & ordinances of said city, which tax bills were duly presented to the officers of the defendant at their office in St. Louis, and payment of said tax bills was duly demanded, and, on refusal of defendant to pay said bills, the plaintiff instituted these suits now consolidated.

The stockholders of said defendant resided mainly in St. Louis, Missouri, some in Ohio, New York, and elsewhere, but none in Illinois. The meetings of the defendant as a corporation for the election of directors have been generally held in Illinois, but the meetings of the directors for the election of its officers and appointment of its employees have been generally held in St. Louis, Missouri. All of the principal business of the defendant done by its directors, superintendant, & other agents has been transacted in the city of St. Louis. The monies collected and received by defendant for ferriages and other dues were kept in St. Louis, and the books of defendant were kept in St. Louis, and some of the disbursements of the defendant were made by its treasurer in the city of St. Louis. The personal property belonging to the
77 defendant, assessed for taxes by the city of St. Louis, for which these consolidated suits were brought, consisted solely of the ferry-boats used by the defendant as a ferry company in ferrying passengers & cargo between St. Louis, Missouri, & East St. Louis, Illinois. The defendant was duly assessed for & paid taxes on said ferry-boats, as well as for its other property, in the State of Illinois. The said ferry-boats were duly enrolled at St. Louis under the laws of the United States.

Therefore, the court, declaring the law to be that the city of St. Louis having no lawful power to tax any property for municipal purposes not taxable by the laws of the State of Missouri, or within the limits of said city, and that the defendant, being a corporation created by the State of Illinois, and said ferry-boats not being within the limits of said city except as they habitually touched at its wharf for the delivery of passengers and cargo—the fact that the principal business office of the defendant was in St. Louis, and that the ferry-boats were enrolled at the port of St. Louis, under the United States laws, did not make said boats taxable as property within said city of St. Louis, and taxable under the

laws of the State of Missouri—determines the issues of fact for the defendant, and orders judgment for the defendant, with costs.

The plaintiff at the time duly excepted to the rule of law de-
78 clared by the court upon the facts aforesaid.

The plaintiff, after the finding and decision of the court, and in proper time, filed the following motion for a new trial, viz: (See motion for new trial, page 73.) But the court overruled said motion, and refused to grant a new trial, and the plaintiff, at the time, duly excepted to the decision of the court. And that all the matters aforesaid may become of record, the plaintiff tenders this bill of exceptions, and prays that the same may be signed and sealed, and made a part of the record; which is done.

SAMUEL TREAT, *Judge.* [SEAL.]
A. KREKEL. [SEAL.]

Writ of error having been issued in these cases, the following bond was filed, viz:

Bond.

Know all men by these presents that we, The City of St. Louis, as principal, and Cyrennis C. Simmons, as surety, are held & firmly bound unto The Wiggins Ferry Company in the full & just sum of one thousand dollars, to be paid to the said Wiggins Ferry Company; to which payment, well & truly to be made, we bind ourselves, our heirs, executors, & administrators, jointly & severally, by these presents, sealed with our seals, & dated this 19th day of May, in the year of our Lord one thousand eight hundred and sixty-nine.

Whereas lately, at the April term, A. D. 1869, of the circuit
79 court of the United States in and for the districts of Missouri, in a suit depending in said court between The City of St. Louis, plaintiff, and The Wiggins Ferry Company, defendant, judgment was rendered against the said City of St. Louis, and the said City of St. Louis having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Wiggins Ferry Company, citing & admonishing said company to be and appear at a Supreme Court of the United States, to be holden at Washington the first Monday of December next:

Now, the condition of the above obligation is such, that if the said City of St. Louis shall prosecute said writ to effect, and answer all damages and costs if it fail to make good its plea, then the above obligation to be void; else to remain in full force & virtue.

CITY OF ST. LOUIS, MO.,
By NATHAN COLE, *Mayor.* [SEAL.]
CYRENNUS C. SIMMONS. [SEAL.]

Sealed and delivered in presence of—

Approved by—

SAMUEL TREAT, *Judge.*

80

81 UNITED STATES OF AMERICA,
Circuit Court for the Districts of Missouri, ss:

I, Benjamin F. Hickman, clerk of the circuit court of the United States in and for the districts of Missouri, do hereby certify the writings hereto annexed to be copies of the record & proceedings in five cases consoli-

dated for the purposes of trial in cases of The City of Saint Louis against The Wiggins Ferry Company, as fully as the same remain on file and of record in said case in my office.

In witness whereof I hereunto subscribe my name, and affix the seal of said court at office in the city of St. Louis, in said districts, this 27th day of July, in the year of our Lord eighteen hundred and sixty-nine.

[SEAL.] BEN. F. HICKMAN,
Clerk of said Court.

(Indorsed:) No. , A. D. 1869. United States circuit court, districts of Missouri. The City of St. Louis against The Wiggins Ferry Co'y. Duly certified copy of the record & proceedings in five cases, consolidated for the purposes of trial.

82 UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States to the honorable the judges of the circuit court of the United States for the districts of Missouri, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, at the April term, A. D. 1869, of said court, between The City of Saint Louis, plaintiff, and The Wiggins Ferry Company, defendant, a manifest error hath happened, to the great damage of the said City of Saint Louis, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice to the parties in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, this nineteenth of May, in the year of our Lord one thousand eight hundred and sixty-nine.

Issued at office in the city of St. Louis, with the seal of the circuit court of the United States for the district of Missouri, dated as aforesaid.

BEN. F. HICKMAN,
Clerk C. C. U. S. Missouri Districts.

Allowed by— SAMUEL TREAT,
Judge of U. S. Dist. Court for East. Dist. of Mo.

83 MISSOURI DISTRICTS, *sct:*

As clerk of the circuit court of the United States for the districts of Missouri, I herewith transmit a transcript of the record and proceedings in the case, as stated in the within writ of error.

In witness whereof I hereunto subscribe my name and affix the seal of said court.

[SEAL.] BEN. F. HICKMAN, *Clerk.*

84 The United States of America to The Wiggins Ferry Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States in and for the districts of Missouri, wherein The City of St. Louis is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, any why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Samuel Treat, one of the judges of the circuit court of the United States in and for the districts of Missouri, this nineteenth day of May, in the year of our Lourd one thousand eight hundred and sixty-nine.

SAMUEL TREAT.

It is admitted that due service of the above citation was made upon The Wiggins Ferry Company this 17th day of November, A. D. 1869.

EWING & HALLIDAY,
Att'ys for Def't in Error.

85 THE CITY OF ST. LOUIS, PL'FF IN ERROR,
vs.
THE WIGGINS FERRY COMPANY, DEFENDANT in error.

And now comes the plaintiff in error in the above-entitled cause, and says that in the record and proceedings in said cause in the said circuit court of the United States for the districts of Missouri there is manifest error in this—

That said court erred in declaring the law upon the facts established in evidence in the case.

Second. That said court erred in refusing to declare the law, as requested by the plaintiff in the court below.

Third. That said court erred in rendering judgment upon the facts established in evidence for the defendant, whereas the judgment should have been rendered in the court below for the plaintiff.

For these and other manifest errors in the said record and proceedings the plaintiff in error prays that said judgment may be annulled and held for naught.

JOHN M. KRUM,
Att'y for Pl'ff in Error.

(Indorsed:) Sup. Court U. S. 1869, Dec. term. No. 334. The City of St. Louis, pl'ff in error, vs. The Wiggins Ferry Company, def't in error. Assignment of errors. Filed 21 January 1870.

(Indorsement on cover:) No. 334. The City of St. Louis, plaintiff in error, vs. The Wiggins Ferry Company. Missouri C. C. U. S.
Filed 7th December 1869.

Supreme Court of the United States.

THE CITY OF ST. LOUIS,
Plaintiff in Error.

vs.

THE WIGGINS FERRY COMPANY,
Defendant in Error.

No. 334.

BRIEF IN BEHALF OF PLAINTIFF IN ERROR.

The only question of law involved in this case, is whether the ferry-boats used by the defendant in error, in ferrying passengers and cargo on the Mississippi river, between the City of St. Louis, Missouri, and East St. Louis, Illinois, are subject to taxation under the laws of the State of Missouri.

The Revised Statutes of Missouri, 1855, 2d Vol., Art. 1, Sec. 1, page 1322, provides that *for the support of the government of the State, the payment of the public debt, etc., a tax shall be levied on the following property:*

"Shares of stock and all other interests held in steamboats, keel-boats, wharfboats, and all other vessels," etc.

The Charter of the City of St. Louis authorizes the city to levy a tax on all property within the city taxable for State purposes.

If the property in question was taxable under the laws of Missouri for State purposes, then it is conceded that the taxes sued for in the consolidated cases were lawfully assessed, and the plaintiff in error is entitled to judgment.

The following are the facts in the case:

The Wiggins Ferry Company was incorporated under the laws of Illinois. The stockholders of the company reside mainly in St. Louis, Missouri; some in Ohio, New York and elsewhere, but none in Illinois. The meetings of the stockholders for the election of directors have been generally held in Illinois, but the directors' meetings for the election of officers and the appointment of employees have been generally held in the city of St. Louis. The company had its principal office and transacted all of its principal business in the city of St. Louis, where its President, Vice President, Treasurer and Superintendent, and other chief officers resided, and where the ordinary business meetings of the directors were held, and where the seal of the corporation was kept. Its minor officers, such as engineers and pilots on its ferry-boats, resided in Illinois, opposite St. Louis, where its real estate was situate; also, its warehouse and some other property. The moneys collected and received by the company for ferriages and other dues, and also the books of the company, were kept in the city of St. Louis, and disbursements of the company were made in said city.

The ferry-boats, on which the taxes in question were assessed, were used by the company in ferrying passengers and cargo between St. Louis, Missouri, and East St. Louis, Illinois. The said ferry-boats were duly enrolled at the port of St. Louis under the laws of the United States, and the defendant in error paid taxes on said boats, as well as on its other property in the State of Illinois. The ferry-boats of the company, when not in actual use, were laid up along the Illinois shore, and were forbidden by a general ordinance of the City of St. Louis regulat-

ing ferries, etc., to remain at the St. Louis wharf longer than ten minutes at a time. The company paid a ferry license, and also paid a tax on the value of its wharf-boats which it erected and used exclusively for its own convenience and advantage, etc., etc.

On these facts the court below in effect decided that the *situs* of the ferry-boats in question was not in the City of St. Louis, and therefore not taxable under the laws of Missouri.

This is error, and to show it the plaintiff in error submits the following propositions:

First.—Personal property does not necessarily follow the domicil of the owner, nor does liability to taxation depend upon his residence merely, but upon the local situation—the *situs* of the property. It is subjected to taxation in consideration of the protection which it receives from the laws of the place where it is found, and where the owner, or his agent, or manager of it, is resident.

Finley v. City of Philadelphia, 32 Penn. Rep., 381.
Mills v. Thornton, 26 Ills. Rep., 300.
S. & M. R.R. Co. v. Morgan Co., 14 Id., 163.
Hoyt v. Com'rs Taxes, 23 N. Y. Rep., 224.
International Life Ins. Co. v. Com. Taxes, 28 Barb., 318.
City of St. Joseph v. Han. & St. Jo. R.R., 39 Mo., 476.

To determine the *situs* of this property it is necessary to consider its character—how and where it was used—by whom managed and used—where the owners and managers kept their principal office—and where and how the earnings of this property were disbursed, etc.

That the boats in question were such as, under the laws of the United States, were required to be enrolled, does not admit of a doubt.

Enrollment must be made at the port *nearest* to the place where the owner resides, or where the acting or managing owner usually resides, etc.

Waring v. Clark, 5 How. (U. S.), 465.
Hays v. Pacific Steamship Co., 17 How., 598.

It is not claimed that the enrollment of these ferry-boats at the port of St. Louis is conclusive as to the *situs* of the property. The enrollment simply indicates the domicil or home port of the vessels, and it is a circumstance to be considered in connection with the other facts in the case in determining the question at issue.

As these ferry-boats were used as a ferry in carrying passengers, etc , across the Mississippi river, to and from the city of St. Louis—the managers of the boats all the time residing in said city—and there received and disbursed the earnings of the ferry-boats, keeping their office there, and the ferry company itself keeping its principal office in said city, the boats already having been enrolled at the last named port, these facts lead irresistibly to the conclusion that the property in question was situate within the city of St. Louis at the time the taxes sued for were levied. This view is in harmony with the conduct and transactions of the active managers of the property, who, of course, acted under the authority and with the approval of the defendant in error. The court cannot blindly disregard the conduct and transactions of the defendant in error, and its officers and agents, resident at the time in the city of St. Louis,

having the property in question directly under their control, and receiving the protection of the laws of Missouri.

These are facts pregnant with significance and meaning. To say that the conduct and transactions of the actual managers, in connection with the ferry-boats in question, are without significance and of no effect, is repugnant to common sense.

It is not necessary that it should be shown that the laws of Missouri furnished protection to the property in question; that will be presumed. Nor is it necessary to show that the ferry company derived any advantages or gains from the management of the ferry-boats and the operating of them within the city of St. Louis. The inference, however, deduced from the voluntary action of the parties is irresistible, that the defendant in error gained every possible advantage from the keeping and operating of their property within the city of St. Louis. It is manifest that all of the practical, life-giving and financial operations of this gigantic corporation were performed within the city of St. Louis. There was its head and the center of its vast operations.

Second.—The fact that the defendant in error submitted to and paid a tax on its ferry-boats in the State of Illinois, is of no force in determining the *situs* of this property, with a view to its being subject to taxation in Missouri.

The collection of the tax imposed on these ferry-boats in the State of Illinois no doubt could have been successfully resisted. Why it was not resisted does not appear. It is not difficult, however, to conjecture a reason why no resistance was made.

The payment of the tax in Illinois neither proves, nor tends to prove, that the *situs* of the property was in that State. Nor, if the tax imposed by the City of St. Louis had been paid, when the *actual situs* of the property was in the State of Illinois, would such payment prove that the property was subject to tax-

ation in Missouri. In short, the *payment* of a tax proves nothing in respect to the *situs* of the property on which it is imposed.

Nor was the payment of a ferry license to the City of St. Louis, and of a wharfage tax on the wharfboats of the company, any available evidence for the defendant in error. These are matters wholly foreign to the question.

Third.—That the place of residence of a corporation may be wherever its corporate business is carried on, we presume, will not be controverted.

Ang. Corp., secs. 103-109.
Louisville R. Co. v. Letson, 2 How. (U. S.) 497.
Black-stone Man. Co. v. Inhabitants, 13 Gray, 488.
Cranwell v. Ins. Co., 2 Rich., 512.

In Farnsworth v. Terre Haute & Alton Railroad the Supreme Court of Missouri held, that a foreign corporation which takes up its residence and establishes its principal office here becomes amenable to the laws and process of the State like an individual resident, etc.; that such corporation was no longer to be regarded as a wholly foreign corporation, but might be sued like an individual resident here, etc.

29 Mo. Rep., 75.
Rev. Stat. Mo. 1855, p. 376.

It is therefore wholly immaterial that the defendant in error at the same time had an office in the State of Illinois, and had a

warehouse, and had both real and personal property in the latter State.

Fourth.—The very question now before this court was adjudicated in the case of the City of St. Louis v. Wiggins Ferry Company, 40 Mo. Rep., p. 580.

The facts in that case are precisely the same as in this.

In view of the principal office and business of the defendant in error being in the city of St. Louis, and also in view of the statutes of Missouri, (quoted above) which authorizes suits to be instituted against foreign corporations, Judge Holmes, in giving the opinion of the court, says: "There can be little doubt that the effect of the statutes of this State is such as to make this corporation, though chartered abroad, a resident of this State, not only for the purposes of suing and being sued by ordinary process, or by attachment, but for all the purposes of ownership of personal property, and of taxation, if the same be actually situated within the city limits."

The reasoning of the court, in the opinion given in this case, is logical and exhaustive, and embraces in all its aspects (as before stated) the *very* question involved in this case.

As the defendant in error comes voluntarily with its officers, agents, employees, property and business into Missouri, has the protection and security of its laws, it is but simple justice, and in accordance with well established rules of law, that the property of the defendant in error, thus situate within the State of Missouri, shall be taxable under its laws. And so it was ruled in the last mentioned case by the Supreme Court of Missouri. This decision should have been followed by the court below in this case.

It is a decision of the court of last resort of Missouri, construing and giving effect to its laws in respect to property situate *within* and owned or claimed by a *resident* of the State.

The refusal of the court below to conform its judgment to the decision of the Supreme Court of Missouri is good ground for reversing the judgment in this case.

JOHN M. KRUM,

Attorney for Plaintiff in Error.



IN THE

Supreme Court of the United States.

DECEMBER TERM, 1870.

THE CITY OF ST. LOUIS, PLAINTIFF IN ERROR,

vs.

THE WIGGINS FERRY COMPANY.

Brief for Defendant in Error.

M. BLAIR,
F. A. DICK,
For Defendants.

J. L. Pearson, Printer, cor. 9th and D sts.



IN THE

Supreme Court of the United States.

DECEMBER TERM, 1870.

THE CITY OF ST. LOUIS, PLAINTIFF IN ERROR,

vs.

THE WIGGINS FERRY COMPANY.

Brief for Defendant in Error.

This is an action of debt against the defendant by the city of St. Louis for certain *municipal taxes*, levied by authority of several ordinances of the city, which authorized the taxation of property "*within the city.*"

The defendant is a corporation in the State of Illinois, chartered to run a ferry on the waters of the Mississippi, at Illinois Town, opposite St. Louis, from lands belonging to the defendant, by act of the Illinois legislature of March 2, 1819. —(See 8 Howard, 570.)

The petition alleges that the defendant was the owner of certain steamboats of the value of $275,000, (p. 23,) which were used in the *transportation of freight and passengers to and from the port of St. Louis*, which boats were registered in St. Louis, (p. 20,) and that said boats, for the year 1864, were taxable "for the support of the municipal government" to the amount of 1 per cent., being $2,750; 2d, for military bounty tax, $275; "for sewer purposes," $275; and other taxes, in the aggregate $3,575, (p. 24.)

The general plea of "nil debet" was filed, and the

facts found by the court show that the president and principal officers of the company reside in St. Louis, and the stockholders mainly there—some in New York, Ohio, and elsewhere, and none in Illinois. The minor officers, such as engineers and pilots, resided in East St. Louis in Illinois, where its real estate, warehouse, and other property is. The boats, when not running, were laid up in East St. Louis, and were forbidden by ordinance to remain in St. Louis at the landing longer than ten minutes at a time. The meetings of the corporation for the election of directors have been generally held in Illinois. The defendant paid the city $3,000 a year for a ferry license, and it was allowed to place its wharfboats at the public landing, and for which a stipulated annual wharfage was also paid, and, in addition, "the defendant was taxed for the value of said wharfboats" and paid such tax thereon.

"The defendant was duly assessed for and paid taxes on said ferryboats, as well as for its other property, in the *State of Illinois*."

The boats were "enrolled at St. Louis under the laws of the United States."—(p. 35.)

On the facts the court declared the law to be that the city of St. Louis had no power to tax said boats, they "not being within the limits of said city, except as they habitually touched at its wharf for the delivery of passengers and cargo. The fact that the principal business office of the defendant was in St. Louis, and that the boats were enrolled at the port of St. Louis, did not make said boats taxable as property within the city of St. Louis."—(p. 35.)

A similar case to this was brought in the state court and decided by the supreme court of the state in favor of the city of St. Louis, and is reported in 40 Missouri Rep., 580. In that case the right of the city to the tax is rested on the fact of the residence of the principal officers of the company and of part of its stockholders in

the city of St. Louis; and next, the enrollment of the boats at St. Louis.—(40 Mo. Rep., 581.)

These points were sustained by that court, and the same views are now urged here.

ARGUMENT.

It is now contended for the defendant that this tax is illegal,

FIRST. Because the defendant is a citizen and resident of the State of Illinois, and actually resides within that state, and there holds and uses the property sought to be subjected to taxation.

The Wiggins Ferry Company is sued in this case as a citizen of the State of Illinois.—(p. 20.)

The settled law of this court is that such corporation actually and permanently resides within the state by whose law it is created; and there has the legal status of a citizen and inhabitant of such state, where only its stockholders can assemble and act as one body.—(See the case of The Germania Fire Ins. Co. v. Francis, December term, 1870.)

In the case of Louisville Railroad Company v. Letson, 2 How., 497, 558, the court say:

"A corporation created by and doing business in a particular state is to be deemed to all intents and purposes as a PERSON—as AN INHABITANT of the same state—capable of being treated as a CITIZEN of that state as much as a natural person."

In Covington Drawbridge Company v. Shepherd, 20 How., 227, 233, Taney, C. J., says for the court, in the above case of Letson, 2 How., 497, the court held "that inasmuch as the corporators were not parties to the suit in their individual characters, but merely as members and component parts of the body which the charter created, the *members who composed* it ought to be *presumed*, so far as its contracts and liabilities are concerned, to reside where the DOMICIL of the body was fixed by law, and

where alone they could act as one person; and to the same extent, and for the same purposes, be also regarded as citizens of the state from which this legal being derived its existence and its faculties and powers."

In Marshall v. Baltimore and Ohio Railroad Company, 16 How., 314, 327, Grier, J., for the court, says:

It is urged a corporation cannot be a citizen; but such objection is a mere *sophism*. Necessarily, in legal view, the *corporation is a person*, and it and not its members give it local habitation and status of citizenship in the only state where they through it can *assemble*.—(p. 328.)

"The presumption arising from the *habitat* of a corporation in the place of its creation being *conclusive* as to the *residence or citizenship* of those who use the corporate name," &c.

Bank of Augusta v. Earle, 13 Pet., 588, says of the corporation:

"It must dwell in the place of its *creation*, and cannot migrate to another sovereignty."

See, also, Ohio and Mississippi Railroad Company v. Wheeler, 1 Black., 286, 296.

SECOND. Cases are referred to by the court, in 40 Mo. R., 586, to show that a corporation may *act* by agents beyond the state, from which the inference is made that this gives the corporation "a *constructive* residence" in a foreign state, "so as to be charged with taxes where its officers and agents are actually present in the exercise of its franchises and in carrying on its business," and the cases of Glaize vs. South Car. R. R. Co., 1 Strobhart, 70; Cranwell vs. Ins. Co., 2 Rich., 512; Hoyt vs. Com'r of Taxes, 23 New York, 224; Wilkes vs. City of Pekin, 19 Ills., 160; City of Albany vs. Meekin, 3 Ind., 481; Hays vs. Pacific Steamship Co., 17 How., 598, are cited to support this doctrine.

But not one of these cases touches the point, and in every one of them the tax sued for was held illegal. In

1 Strobhart, 70, and 2 Rich., 512, there was no tax question whatever, and the only point decided was that a corporation might be *sued* in another district in the *same* state than that in which it had its principal office. In 23 New York, 224, the court held that a merchant in New Orleans can *not* be taxed in New York on his stock in trade merely because he has an office in New York; and yet the court, in 40 Mo., p. 589, cites this case as holding that "a distinction was made between ships and other personal property, and it was said that ships registered at a port within the state and having consequently no situs elsewhere, were justly taxable to the resident owners." And the case of Hays vs. Pacific Steamship Co., 17 How., 598, is cited as authority to sustain the tax, when, in fact, it is authority against it, as is shown below.

THIRD. The home port of these boats is opposite the city of St. Louis, known as East St. Louis, formerly Illinois Town. The act of the Illinois legislature of March 2d, 1819, says that Wiggins and his representatives "are hereby authorized to establish a ferry on the waters of the Mississippi *near the town of Illinois, in this state*, and to run the same from lands at the said place that may belong to him." * * "*And be it further enacted*, That the ferry hereby established shall be subject to the same taxes as are now or hereafter may be imposed on other ferries within this state and under the same regulations and forfeitures."—(8 Howard, 570, 571.)

The finding of the court shows that these officers and agents of the defendant who actually remain with and control the boats do not reside in Missouri, "but opposite the city of St. Louis, where its real estate is situated, also its warehouse and some other property," (Record, 34–35,) and that the boats when not running "are laid up" at the same place; and it was contrary to the city ordinance concerning ferry-boats, when on the St. Louis side, that they can remain there "longer than ten minutes at a time."

Whenever a boat was not running or became disabled or was to be repaired, she was within the jurisdiction and boundary of the State of Illinois, there taken by the defendant's agents, and there in actual possession of the defendant. Under such a state of facts there is no room for a constructive presence in St. Louis, or a constructive possession of the boats by the general or financial officers of the company. The possession of the money collected by the company for ferriage or freight in the hands of its treasurer is not possession of the boats. The point of departure on each trip of the boats was from the port where she was laid up and at rest, and to that port must and did each boat return, and when so returned, and not until then, was such trip at an end.

THIRD. The home port of a vessel is that at or near which the owner, when owned by one person, usually resides; and this is not changed by her enrolment at another port, especially when the first-named port is not a port of enrolment.—(See Hill vs. Steamer Golden Gate, Newberry R., 308.)

Hays vs. Pacific Steamship Co., 17 How., 596, holds that steamships owned and enrolled in New York, but running between San Francisco and the Isthmus, cannot be taxed by the State of California. * * "They were not properly abiding within its limits so as to become incorporated with the other personal property of the state."—(p. 599.)

In the case of Hill vs. The Golden Gate, Newberry, 308, the court say: "Whether a vessel is a domestic or foreign vessel depends on the residence of her owners—not upon the port of her enrolment," (p. 308, 310;) "that the Supreme and Circuit Courts of the United States look to the residence of the owners, and not to the place of enrolment of a vessel, to determine her character, will be apparent by examining the decided cases." The court then cites The General Smith, 4 Wheat., 438; The Brig

Nestor, 1 Sumner, 75; Bark Chusan, 2 Story, 456; and add: "It frequently happens, as in this case, that the owners reside in one state and the port nearest to them is in another state, and this is especially the case on the Ohio and Mississippi rivers."—(See, also, The S. B. Superior, Newb., 181.)

In the late case of the "Lulu," 1 Abbot U. S. Reports, 191, decided by Mr. Chief Justice Chase in 1868, at Baltimore, he recognized the same rule of law, saying, (p. 193,) "it is clear that, under the American decisions, Baltimore being in another state than that in which the vessel was *owned* and enrolled, must be regarded as a foreign port;" and again: "such a charter might be considered as transferring her *home port* from New York to Baltimore:"—he speaks of a charter by her New York owners "to citizens of Baltimore for the Charleston trade."—(p. 193.)

3 Kent Com., 170, defines a foreign ship as "a ship in the port of a state to which she does not belong," and note "A" to page 170 says: "It has been suggested in some of the cases that any place where the vessel and the owner are not together is to be deemed a foreign port in respect to the power of the master, in a proper case, to subject the vessel to a lien."

3 Kent, 133, in the text, says, in speaking of the liability of an owner for repairs: "The ownership in relation to this subject is not *determined by the register.*"

See Ship Lavinia vs. Barclay, 1 Wash. C. C., 49, 52, holding a port in which one of the owners resides is domestic as to its effect on power of master to hypothecate the vessel.

Jordan vs. Young, 37 Maine, 276. "If defendant be a resident of Cape Elizabeth, and the vessel be at a wharf in Portland when the repairs were made, she must be considered in her *home port.*"—(p. 279.) Cape Elizabeth is an adjoining town.

The United States statutes on the subject of registering vessels also imply the same meaning.

The first act is that of September 1, 1789, 1 Statutes, 55. Section 2 gives form of certificate of "registry from the collector of the district to which such vessel belongs," and one of the blanks is for the "place to which the vessel belongs."

Sec. 4, p. 56. "That the port to which any such vessel shall be deemed to belong, agreeably to the intent and meaning of this act, shall be the port at or near to which the husband or acting and managing owner or owners actually resides," &c.

The provisions of the act of 1792, 1 Statutes, 287, are about the same.

Sec. 3 says: "Every vessel shall be registered by the collector of the district in which shall be comprehended the port to which such vessel shall belong at the time of her registry, *which port shall be deemed to be that at or nearest to which the owner*, if there be but one, or, if more than one, the husband or acting and managing owner of such ship *usually resides*."

Mr. Justice Clifford says, in Blanchard vs. The Brig Martha Washington, 1 Clifford R., 463–467: "Regulations to the same effect are prescribed by the act of the 18th February, 1793, for enrolling and licensing ships or vessels to be employed in the coasting trade and fisheries." 1 Statutes, 305, and this case, speaks of the "collector of the home port, which by law is defined to be the port at or nearest to which the *owner*, if there be but one, * *usually resides*." (Id., p. 467.)

FOURTH. This tax is illegal because imposed upon a national vessel engaged in commerce between two of the states on a navigable river. Vessels so engaged are subject only to national taxes and regulations, and are expressly withdrawn from state taxation. A tonnage tax is simply a tax upon vessels, and belongs exclusively to the National Government under the provisions giving power to Congress to collect taxes and duties, and to regulate commerce with foreign nations and among the

several states; and having belonged to the states before the adoption of the Constitution, was surrendered by them in the clause saying that "no state shall, without the consent of Congress, lay any duty of tonnage."

In Gibbons vs. Ogden, 9 Wh., 1, it was held that the steamboats of Ogden, which were running from Elizabethtown in New Jersey to the City of New York, and carrying passengers only, and no freight, were engaged in commerce between two states, and, also, that the enrolment gives the national character of an American vessel, and makes her part of the American marine.

Tonnage duties were at first considered an important source of revenue to the United States, and also a matter of great national importance on account of the effect they had upon the creation of a national marine.

The first Congress met March 4, 1789, and the second measure introduced was by Mr. Madison to lay duties on imports and *on vessels*. This was on the 8th of April, 1789.—(1st Benton's Debates, 23.)

On the 5th of May, 1789, an extended debate was had, and the objects of such tax were stated to be, 1st, to encourage American shipping; 2d, to raise revenue; 3d, the support of light-houses and beacons for the purposes of navigation.—(Id., p. 48.)

The necessity of a high tonnage tax for the establishment of an American marine was urged by several, (p. 49–50,) who proposed a duty of 50 cents a ton on foreign vessels. Mr. Smith, of Maryland, showed that under the existing state laws of Maryland and Virginia a higher tax than that was carried prosperously.—(p. 54.) The debate was resumed the 7th of May, when the following resolution was adopted:

"*Resolved*, That there ought to be levied *on* all *vessels* * the duties following at the rate of — per ton."—(Id., p. 57, May 7, 1789.)

On 20th of July, 1789, 1 Stats., 27, the first tonnage

act was passed imposing six cents per ton on American and fifty cents on foreign vessels.

On July 31, 1789, 1 Stats., 29, was passed a further act, the 1st section reading thus: "That for the due collection of duties imposed by law on the tonnage of ships and vessels, and on goods, wares, and merchandise imported into the United States, there shall be established districts, ports, and officers," to wit.

The act of August 4, 1790, sec. 44, 1 Stats., 169, prescribes the mode of ascertaining tonnage of a vessel by measurement.

In December, 1816, President Madison, in his message to Congress, speaks of the depressed state of our navigation, and of the injurious policy of England relating to it, and suggests appropriate legislation.

On 14th of January, 1817, 3 Stats., 344, an act was passed raising foreign tonnage to $2 per ton on vessels from ports from which United States vessels are not permitted to trade, down to June 30, 1817; and by act of March 3, 1817, 3 Statutes, 369, the same provision continued after June 30, 1817; and it was enacted by act of March 1, 1817, 3 Stats., 351, after September 30, 1817, importations shall be only in American vessels, provided this shall not apply to nations who have not similar laws.

On February 10, 1830, Mr. Benton introduced bill to reduce taxes, and to abolish tonnage tax as to foreign nations who so reciprocate.—(See 10th Benton's Debates, 463–470.)

May 31, 1830, 4 Stats., 425, sec. 1, repeals all tonnage on United States vessels of which the officers and two-thirds of the crew are citizens of the United States.

Section 2 repeals such duties on foreign vessels who so reciprocate. The law remained so until the following laws were passed:

First, the act of July 14, 1862, sec. 15, 12 Stats., 558, which lays additional tonnage tax of 10 cents to existing tax,

and next, the act of March 3, 1865, sec. 4, 13 Stats., 493, raises the tax to 30 cents.

1 Parsons on Mar. Law, 35, (edition of 1859,) says: When the registry laws "were originally enacted and for some time afterwards heavy tonnage duties were levied in certain cases which were thought to constitute quite an important part of the revenue. These are practically abolished, or nearly so."

Article 1, section 10, clause 3, of the Constitution of the United States, says that "no state shall, without the consent of Congress, lay any duty of tonnage."

The tax here in question is a tonnage tax. If the amount of it had been fixed by the rate per ton, it would have resulted in requiring payment of a given amount according to the capacity of the vessel; as the law is framed, the amount to be paid is according to the value of the vessel; either process imposes a burden on the vessel. This is a tax, for the amount is imposed by the state government for the general and various purposes for which revenue is raised, and goes into the public treasury.

In Cooley v. Philadelphia, 12 How., 299, it was urged against the law of Pennsylvania regulating pilots that it was a tax on tonnage, (p. 302.) To this the court answer, that the objects for which the money so raised was appropriated show that it was not a law to raise revenue, (p. 313;) and the court add: "It cannot be denied that a tonnage duty, or an impost on imports or exports, may be levied under the name of pilot dues or penalties; and certainly it *is the thing* and *not the name* which is to be considered."

In the case of the Steamship Company v. Portwardens, 6 Wallace, 31, the state law gave the wardens of the port of New Orleans the right to demand five dollars of every vessel arriving in port.

This tax was upheld by the state court, but was held by this court to be invalid; first, because a regulation of commerce; and second, because a tonnage tax.

The court say: "We think, also, that the tax imposed by the act of Louisiana is, in the fair sense of the word, a duty on tonnage. In the most obvious and general sense, it is true that those words describe a duty proportioned to the tonnage of the vessel—a certain rate on each ton. But it seems plain that, taken in this restricted sense, the constitutional provision would not fully accomplish its intent. The general prohibition upon the states against levying duties on imports or exports would have been ineffectual if it had not been extended to duties on the ships which serve as vehicles of commerce. This extension was doubtless intended by the prohibition of any duty of tonnage. It was not only a *pro rata* tax which was prohibited, but any duty on the ship, *whether a fixed sum on its whole tonnage*, or a sum to be ascertained by comparing the amount of tonnage with the rate of duty."

By referring to 3 Mad. Papers, 1585, it will appear that the provision in the Constitution respecting tonnage duties was inserted under the belief that it was a part of the power to regulate commerce.—(3 Madison Papers, 1585, 1586.)

McLean, J., 7 How., 408, the Passenger Cases, says:

"A tax or duty upon tonnage, merchandise, or passengers, is a regulation of commerce, and cannot be laid by a state except under the sanction of Congress."

In the Passenger Cases, 7 How., 283, the state tax was held void by Judges Wayne, McLean, Catron, Grier, and McKinley, a majority of the court.

On pages 412, 414, Mr. Justice Wayne gives a summary of the points in which these five judges concur, and both he and Judge Grier refer to Judge Catron's opinion as adopted by them.

The laws in question imposed a tax on the admission of passengers from abroad or other states. Catron, J., shows that Congress has exempted the *property* of such passengers arriving in the country from tax, and holds

this is in *effect* an exemption of the persons, (pp. 439, 442,) and says: "How is it possible to reconcile state laws laying taxes on every passenger with this careful security of immigrants against every legal burden or charge of any kind. * * It is evident by these acts of legislation Congress has covered the whole field of legislation over this branch of commerce."—(442.)

It will be observed that the exemption of the passenger is not by express language, but inferred from intent of statutes which exempt the effects of immigrants, and make the whole subject free of duty. And the opinion comments on the dangerous extent of such state laws; "and that they may be extended, if upheld by this court, to every ferryboat that crosses a narrow water within the flow of tide which divides states, and to all boats crossing rivers that are state boundaries.

"*These laws now impose taxes on vessels* through their masters. * *They tax* through their masters all *American vessels* coming from other states, including steamboats, *protected by coasting licenses* under United States authority, and also *exempt by the Constitution* from paying duties in another state—(namely, clause 6, sec. 9, art. 1, saying, *nor shall vessels bound to or from one state be obliged to enter, clear, or pay duties in another.*) They tax through the masters foreign vessels protected by the Constitution from *tonnage duties.*"—(p. 445.)

This is a clear expression that such tax is within the meaning of tonnage duties.

The opinion next comments on the above-cited sixth clause of the Constitution, and speaks of its protection to domestic vessels, thus:

"Around our extensive seaboard, on our great lakes, and through our great rivers this protection is relied on against state assumption and state interference. Throughout the Union our vessels of every description go free and unrestrained, regardless of state authority. They enter at pleasure, depart at pleasure, and *pay no duties.* Steamboats pass for thousands of miles on rivers that are

state boundaries, not knowing, or regarding, in whose jurisdiction they are, claiming protection under these provisions of the Constitution. If they did not exist such vessels might be harassed by insupportable exactions. If it be the true meaning of the Constitution that a *state can evade them* by declaring that the master may be taxed in regard to passengers, * and that the state may assess the amount of tax at discretion, then the old evil will be revived, as the states may tax at every town where a vessel of any kind lands. * If the first part of the state law is void, *because it lays a duty on the vessel under the disguise of taxing the master*, how can the part giving the master a remedy over against the passengers be valid?" (Id., 445–446.)

See, also, the Argument, p. 447, to show that even by consent of Congress such taxes could not, for purpose of raising state revenue, be laid upon vessels or imports.

The opinion next shows that the treaties with England, securing the free and untaxed admission of persons, would be violated by such state laws. (p. 450.) This is analogous to the statute provisions making free the Mississippi river.

The opinion closes thus: "It is also insisted that the states may tax all persons and property within their respective jurisdictions except in cases where they are affirmatively prohibited. Certainly the states may tax their own inhabitants at discretion, *unless they have surrendered the power*. But constitutional exceptions to the state power are so broad as to render the claim valueless in the present instance. The states cannot lay duties on imports *nor tonnage duties*. If they tax the master and crew they indirectly lay a duty on the vessel."—(Id., 452.)

Mr. Justice Grier, who delivered a separate opinion in one of the cases, says:

"It is a just and well-settled doctrine established by this court that a state cannot do that indirectly which she is forbidden by the Constitution to do directly. If

she cannot levy a duty or tax from the master or owner of a vessel engaged in commerce, graduated on the tonnage, she cannot effect the same purpose by merely changing the ratio and graduating it on the number of masts, or of mariners, the size and power of the steam-engine, or the number of passengers. We have to deal with things, and we cannot change them by changing their names. Can a state levy a duty on vessels engaged in commerce, and not owned by her own citizens, by changing its name from a duty on tonnage to a tax on the master, and justify this evasion of a great principle by producing a dictum to prove that a ship captain is not a vessel? The Constitution of the United States, and the powers confided by it to the general government to be exercised for the benefit of all the states, ought not to be nullified or evaded by verbal criticism without regard to the aim and object of the instrument."—(Id., 458–459.)

And, on page 458, he says such tax "is, in fact, a duty on the vessel—not measured by her tonnage it is true, but producing a like result by merely changing the ratio."

Brown vs. State of Maryland, 12 Wheat., 419, and 6 Pet. Cond., 558, shows that the prohibition of the states to tax imports applies to goods not only while being imported but after. "It would not, however, be less a duty on the articles if it were to be levied on them after they were landed."—(Id., 557.)

While in the original package in which imported, "a tax upon the article is too plainly a duty on imports to escape the prohibition in the Constitution."—(Id., 560.)

But the tax here in question, namely, a license to sell, it was urged, "is not a tax upon the article but on the person." The state, it is said, may tax occupations, and this is nothing more. It is impossible to conceal from ourselves that this is varying the form without varying the substance. It is treating a *prohibition which is general* as if it were confined to a *particular mode* of doing the forbidden thing. All must perceive that a tax on the sale

of an article imported only for sale, is a tax on the article itself."—(Id., 562.)

The power to regulate commerce "is co-extensive with the subject on which it acts, and cannot be stopped *at the external boundary of a state, but must enter its interior.* * * It is inconceivable that the power to authorize this traffic, when given in its most comprehensive terms, with the intent that its efficacy should be complete, should cease at the point where its continuance is indispensable to its value."—(Id., 564.)

It has been objected that this power of Congress, thus construed, "would abridge the acknowledged power of a state to tax its own citizens or their property within its territory. We admit this power to be sacred, but cannot admit that it may be used so as to obstruct the free course of a power given to Congress; we cannot admit that it may be used so as to obstruct or defeat the power to regulate commerce:" (id., 565,) and the court further (p. 566) comment on the restriction of the power of the states to tax certain national interests which they have no power to touch.

In this case the act in question did not purport to levy a direct tax on imports, but merely required a license to be paid to the state before they could be sold by importers.

In McCullough vs. Maryland, 4 Wheat., 316, 4 Pet. Cond., 466–484, the court decided that the states have no power to tax property placed within exclusive jurisdiction of the United States; that the power to tax is "incident to sovereignty, and co-extensive with that to which it is an incident. All subjects over which the sovereign power of a state extends are objects of taxation, but those over which it does not extend are, upon the soundest principles, exempt from taxation."—(Id., 486.)

In this "we have a principle which is safe for the states and safe for the Union. We are relieved from clashing sovereignty; from interfering powers; from a repugnancy

between a right in one government to pull down what there is an acknowledged right in another to build up; from the impracticability of a right in one government to destroy what there is a right in another to preserve."—(Id., 487.)

Wayne, J., says, in Passenger Cases, 7 How., at p. 421:

"The right in a state occurs—not in all cases, for there are international exceptions—upon all persons and things when they come within its territory. Not, however, because they are within the territory, but because they are under the sovereignty or political jurisdiction of the state. If not within the latter the right to tax does not arise."

5 How., 504, 575, Taney, Ch. J., says:

"Goods imported, while they remain in the hands of the importer in the form and shape in which they were brought into the country, can in no just sense be regarded as a part of that mass of property in the state usually taxed for the support of the state government."

Page 576.—He shows that a tax on imports is a tax on the consumer, and says, "as the tax cannot be imposed directly, it is not a sound construction of the Constitution to authorize a state to accomplish precisely the same thing under another name."

In Alexander v. Railroad Company, 3 Strobhart Law Rep., 594, So. Car., an ordinance of the city of Charleston, that vessels from the adjoining states shall pay the harbor-master one cent per ton, held to be a tonnage duty, and unconstitutional.

Sheffield v. Parsons, 3 Stewart & Porter, 302, a similar charge on vessels entering the port of Mobile, held also unconstitutional.

II. This tax is prohibited by laws of the United States relating to the western rivers and shipping.

The act of Feb. 20, 1811, 2 Statutes, 642, sec. 3, authorizing Louisiana to form a state government, provides "that the river Mississippi and the navigable rivers and waters leading into the same, shall be common highways,

and forever free as well to the inhabitants of the said state as to other citizens of the United States, without any tax, duty, impost, or toll therefor, imposed by the said state."

The statute of June 4, 1812, 2 Statutes, 747, sec. 15, establishing a territorial government for Missouri, says: "The Mississippi and Missouri rivers and the navigable waters flowing into them, and the carrying places between the same, shall be common highways, and forever free to the people of the said territory and to the citizens of the United States, without any tax, duty, or impost therefor."

The act for the formation of a state government for Missouri, of March 6, 1820, 3 Statutes, 546, sec. 2, provides "that the said state shall have concurrent jurisdiction on the river Mississippi, and every other river bordering on the said state, so far as the said rivers shall form a common boundary to the said state, and any other state or states, now or hereafter to be formed and bounded by the same, *such rivers shall be common to both;* and that the river Mississippi, and the navigable rivers and waters leading into the same, shall be common highways and forever free, as well to the inhabitants of the said state as to other citizens of the United States, without any tax, duty, impost, or toll therefor, *imposed by the said state.*"

The territorial government of Illinois was established by act of February 3, 1809, 2 Statutes, 514, and adopted the provisions of the ordinance of 1787 respecting the Mississippi river, (1 Statutes, 51, note,) which is the same as the provision in the Louisiana territorial act.

The acts admitting the State of Illinois, April 18, 1818, 3 Statutes, 428, and December 3, 1818, Id., 536, contain substantially the same provisions.

III. This tax is also forbidden by the 6th clause of section 9 of article 1 of the Constitution of the United States, saying:

"No preference shall be given by any regulation of *commerce or revenue* to the ports of one state over those of another, nor shall vessels bound to or from one state be obliged to enter, clear, or pay duties in another."

The majority of the court held, in the Passenger Cases, 7 How., 283–414, as stated by Mr. Justice Wayne, that this regulation applied to the states as well as to Congress, "and that *any tax* by a state *affecting the right* of navigation is contrary to the aforesaid grant." On pages 412–414, he states the nine points ruled by the majority of the court in those cases.

To levy any tax whatever upon vessels engaged in commerce on this river is to tax the river as a highway, and the State of Missouri has no more jurisdiction over any part of the internal marine of the citizens of the United States than over the foreign marine. Both are beyond its jurisdiction, either to regulate or to tax.

M. BLAIR,
F. A. DICK,
For Defendants.

March, 1871.



Supreme Court of the United States.

IN EQUITY.

EUREKA CLOTHES WRINGING MACHINE CO., APPELLANTS,

vs.

BAILEY WASHING AND WRINGING MACHINE CO.

[*Appeal from the Circuit Court of the United States for the District of Massachusetts.*]

BRIEF FOR ~~PLAINTIFFS~~. appellee

MAY IT PLEASE THE COURT:

The parties to this suit are corporations, — the plaintiffs being organized under the laws of Rhode Island, and doing business at Woonsocket, in that State, under the name of the Bailey Washing and Wringing Machine Co., and the defendants, under the laws of Massachusetts, and doing business at Waltham, under the name of the Eureka Clothes Wringing Machine Co.

The material allegations of plaintiffs' bill of complaint are, that in January, 1859, one John Allender, of New London, in the State of Connecticut, obtained a patent for a new and improved clothes wringer, which patent has, by mesne assignment, come into the hands of the plaintiffs; that said patent has been reissued, and is now numbered 1934, and dated January 11th, 1859. That the defendants are engaged in the manufacture of clothes wringers; that they were notified that they were infringing the John Allender patent, and that they must either stop manufacturing, or take a license under the same, and pay the plaintiffs [illegible] between the proper agents of the parties

That by these papers the plaintiffs, among other things, licensed the defendants to use such parts of the John Allender invention as were contained in a sample machine, to be deposited with the plaintiffs. And the defendants, in consideration of such license, agreed to account to the plaintiffs every month for all the wringers manufactured by them during such month, and to pay a tariff of fifty cents on each machine manufactured. There are also numerous other covenants in said agreements, which it is not essential to allude to in this argument. The plaintiffs allege that the defendants have not rendered their accounts, nor paid their tariffs, as agreed upon, except one payment of fifty dollars, and pray that they may be compelled to do so; and until they render such account, and make such payment, may be restrained from manufacturing any wringing machines similar to the sample.

There are two answers filed in this case; one signed and sworn to by Mr. Rindge, and the other signed by Mr. Alexander, as agent of the Eureka Company, and sworn to by Mr. Alexander and Mr. Rindge. They are both substantially the same, and may be considered as forming one and the same answer. By these answers the defendants leave us to prove our incorporation and our title to the Allender patent, and deny the execution of the agreements A and B, and set up in defence that they do not infringe the Allender patent.

To prove their incorporation the plaintiffs produce a copy of the act of the Rhode Island Assembly. See Exhibit H, page 45.

We also offer a certified copy of the reissued patent which was originally granted to John Allender, and afterwards conveyed to the plaintiffs by mesne assignments. See Exhibits C, G, F, and E, on pages 46, 51, 50, and 49.

This disposes of the minor points in the case, and brings us to the main question of whether the defendants are bound by their agreements, Exhibits A and B.

The history of these agreements in brief, as shown by the testimony, is this: In the negotiations which had been conducted previous to the 24th of March, 1866, the plaintiffs were represented by Mr. S. A. Bailey, their g[illegible]

these parties were also large stockholders in the Eureka Co., owning in the aggregate over two thirds of the stock. Mr. Tower, in the summer of 1865, requested Mr. Bailey to forward him for examination the license papers which he desired his company to execute; which request he complied with. The defendants had given Mr. Bailey no decisive answer to his demand, and matters were in this uncertain position when the Metropolitan Washing Machine Company commenced a suit against the defendants for infringement of what is called the John Young patent. A settlement of this suit was effected by the defendants taking a license under the Young patent, and paying the expenses of the suit. The parties agreed to meet in Whiting and Russell's office on the 24th of March, and carry out this arrangement. Mr. Bailey heard of this meeting, and thought it would be a favorable opportunity for him to get a definite answer from the Eureka Company, as he would find all their officers together, and he went there for that purpose.

He found Mr. David Lyman, the agent of the Metropolitan Company, present, with Mr. Wm. G. Russell, his counsel, and the Eureka Company represented by Mr. John D. Howe, their counsel, and Mr. Rindge, Mr. Tower, and Mr. Alexander. He demanded of the latter party an answer to his proposition of granting them a license, made months before. After considerable discussion, the Eureka parties agreed to take a license as requested by Mr. Bailey. The papers A and B, which Mr. Bailey had previously sent to Mr. Tower, were at the company's office at Waltham, and the parties agreed to meet at Mr. Russell's office the next Monday, which was the 26th of March, and perfect the arrangement by executing the papers. They did meet upon that day and executed Exhibits A and B. At the meeting on the 24th, the defendants took a license of the Metropolitan Company, and paid five hundred dollars to cover the expenses of the suit, Mr. Rindge executing the papers and paying the money.

The parties separated after these agreements were executed; and, in a few days after, the plaintiffs received by express a clothes wringer manufactured by the Eureka Company, and marked as stated in the agree-

The 1st of May the defendants paid the plaintiffs fifty dollars for tariff on one hundred machines. Afterwards, when the plaintiffs demanded a further account, the defendants refused to give it for the reason, as they said, that they did not infringe the Allender patent. At the end of ten months the plaintiffs brought their bill in equity to enforce the provisions of Exhibits A and B, and then, for the first time, they are met with the statement that Mr. Rindge had no authority to execute these agreements, and therefore they are not binding upon the defendants.

The Circuit Court saw no validity in this defence, sustained our bill, and the defendant appealed.

The plaintiffs' case rests upon two propositions.

1st. That Mr. Rindge was the duly authorized agent of the defendants to execute Exhibits A and B.

2d. If Mr. Rindge was not duly authorized, the defendants have since ratified and accepted his act.

Before proceeding to discuss the facts, I desire to draw your attention to certain propositions of law by which the facts in this case must be controlled and applied.

1. A corporation may adopt any seal they choose for the time being as well as an individual.

Perkins, 1, § 32.
Mill Dam Foundry *vs.* Hovey, 21 Pick. 428.
Porter *et als. vs.* Androscoggin & Kennebec R. R. Co., 37 Maine, 349.
Bank of Middlebury *vs.* Rutland & Washington R. R. Co., 30 Vermont, 159.

2. Where a corporation makes a contract through an agent who puts to it a seal, it becomes their contract though it has not their common seal.

See cases cited above.

3. A corporation may appoint an agent by mere vote, or by any corporate act whatever.

Angell & Ames on Corporations, 313.
Bank of Columbia vs. Paterson's Adm. 7 Cranch, 305.

them. Under the decisions previously cited, these facts hold the defendants.

The defendants appear to admit by their testimony that this conclusion is correct, and attempt to defeat our claim by other defences. They say that we have not proved that the sample machine D was delivered to us by them. We answer this by saying that even if this were true, it does not relieve them from paying a tariff under Exhibit A; but it is not true. We do prove a delivery of the sample machine, by proofs convincing to any fair mind. By examining Exhibit A, it will be seen that a sample machine was to be deposited with the plaintiffs. Mr. Bailey says, that when the agreements were executed the defendants had no machine there, but the defendants promised to forward one, and in a few days the plaintiffs received a Eureka machine marked as agreed upon in the agreements, and supposed it to be the sample machine. Page 21, int. 8. Mr. Whipple confirms this statement. Pages 29 and 30. This is the statement of the case for the plaintiffs, but I am willing to try it upon the testimony of the defendants.

Mr. Alexander says he has no recollection of sending this machine to plaintiffs. Page 59. On cross-examination he admits that he heard Mr. Rindge agree to send Bailey a sample machine. Page 60, ints. 22 and 23. Mr. Rindge nowhere denies this statement, when he is questioned about this very matter.

The counsel for the defence asked him if he ever *directed any one to send* a sample machine to the plaintiffs, and he answered, "I believe not." His counsel does not ask him *if he ever sent one*, although Mr. Alexander had previously testified that he had heard him agree to do so.

The defence thus calling Mr. Rindge's attention to the matter without framing any inquiry to contradict Mr. Alexander's statement, in effect admit its truth.

The defendants in their testimony have insisted that since the making of the agreement they had not manufactured any machines like D, but had exclusively made machines like *R*, a sample of which they produced. The distinction claimed is trivial, as will appear on inspection of the two machines and by the proofs. The defendants' machine R includes all of sample D. Referring to the agreement A, it will appear that the defendant asked to be licensed to use such parts of the John Allender invention secured in said reissued patent as are contained in sample D,

which they filed with the plaintiff, and no others, which, with cautious limitations against the use of any more than this, was granted to defendant company.

The defendant has contended in taking the evidence that the construction of this grant was such that it affected and related only to the making of machines like DD, and that when they constructed any other machine than D, they were outside of the subject of the license, and in a field where they were under no covenants whatever; that *R* differs from D, and therefore is not within the scope of the agreement. We deny both the view taken of the agreement and the application made of it to the two machines. The agreement A does not limit the defendants to construct their machines like sample D. It grants license to use so much of Allender as is in D, but there is no restriction except as to the size of the rolls and a prohibition to make a bench machine. The extent of the grant is to use so much as is in the sample and no other.

There might arise a case, where for its determination it would be necessary to settle the construction of the agreement, as to whether the defendants were not bound to pay on all machines which they constructed, regardless of their organization, but this need not be considered here, as the machine R, which they say they have mainly constructed, contains all the parts that D has, which in any way resemble the John Allender patent. Inspecting the two, the court will see that the whole of D is contained in R, and that R is distinguished from D only by a further addition of a hinge or joint in the clamps of D, so that it will more readily accommodate itself to the different curvatures of different tubs.

Waters, p. 44, ans. 5.
Hibbard, p. 39, ans. 5.
Baldwin, p. 69, cross-ints. 3, 4.
Treadwell, p. 89, ans. 21.

All that existed in D has been constructed in all defendants' machines, so that the matter of an addition thereto is immaterial to both parties; the thing concerning which the license was asked and granted, have been constantly used by them.

ADMISSION OF ORIGINALITY OF OUR PATENT.

If, as we assume, the agreements A and B are proven, the defendant, by the principles of equity, is not permitted to deny the title which has not failed him.

Parkhurst *vs.* Kinsman, 18 Howd. 289.
Wilder *vs.* Adams, 2 Wood & Min. 329.
Hill *vs.* Laming, 24 Eng. Law & Eq. 452.
9 Exchcq. R. 256.
Taylor *vs.* Hall, 1 N. R. 260.
Baird *vs.* Neilson, 8 Clark & Fin. 734.
Sergeant *vs.* Learned, 2 Curtis Rp. 344, 347.

There has been no eviction of the defendant; the injunction against Slocum, obtained March, 1866, sustaining this Patent, in this Court, is still in force. Other judgments in our favor have also been rendered since in various circuits, and no judgment has been given against us.

Cutter *vs.* Brown, 63 Eng. Com. Law R. 972.
Noonan *vs.* Lee, 1 Black, S. C. 508.

The recitals in the agreement A amount themselves to an admission of title in the complainants.

1st. That plaintiffs are the legal owners of the reissue.

2. p. 7. "That the party of second part covenant and agree, that they will not violate or infringe upon the said reissued patent during the continuance of the same or of any re-issues, renewals or extensions of the same, and they shall be bound by this agreement even if they violate its conditions, during the remaining term of said patent, or any renewal or extension of the same," &c.

B. "That license was granted on condition parties should execute B."

There is the highest acknowledgment of the validity of this Patent, — a covenant to be bound by it during its possible term, even should it at the time of making the agreements be INOPERATIVE OR INVALID so as to require a *reissue* after the agreement.

A recital of a particular fact is an estoppel.

1 Spencer, Eq. Juris. 449–50.
Goodyear *vs.* Congress Rubber Co., 3 Blatch. 452.
Bowman *vs.* Taylor, 2 Ad. & Ellis, 278.
Hindmarch on Patents, p. 246.

It is therefere apprehended that the defendants have no right in equity to go into any inquiry concerning the validity of the reissue of the Letters Patent on which these agreements are based.

The same authorities apply to the letting in proof on the question of infringement.

The defendant corporation admits they have made wringing machines, and by agreement A, p. 14, they covenant, as consideration, for A and B, that they will submit to us monthly, on oath, a statement of the number of machines manufactured by them, "and pay at the same time to the party of the first part a tariff of fifty cents on each and every wringing machine by it constructed during the last mentioned month." By agreement B, p. 17, points 3 and 4, the parties covenant mutually as to "machines similar to those of the party of the second part."

The recital in B of its object "to establish prices for the sale of wringing machines made by the party of the second part, so as to prevent any interference with the machines made by the parties of the first part and by other licensees of the party of the first part."

It is difficult to see, in the light of the authorities before cited, how the defendants, having once, under seal, admitted that it asked for a license to use so much of John Allender's invention as was included in defendants' machine, and to come into the benefit of the trade covenants with the plaintiff, and having enjoyed the benefits of our covenants, and still holding all the fruits of them in his own hand, and the agreement still standing uncancelled, can now have the right to set up either questions of validity or infringement in avoidance of this obligation in his contract to pay us part of the profits received in consequence of these mutual covenants.

The idea of a license, in itself, to one already manufacturing wringers, involved the two questions of validity and infringement as to his manufacture, and addressed itself differently to his mind as a business question

than if not already in the business. His application then was an acknowledgment of the infringement of the sample he produced, as well as of the patent whose prestige and protection he sought.

The estoppel by these deeds on this subject is therefore clear.

18 Howd, 289. 2 Wood & Minot, 329.

ORIGINALITY.

The case in our view of the principles of equity, would rest here absolutely, but the defendants' counsel do not appear to agree with us as to the rules in equity on the issues presented on the bill and answer, and, notwithstanding our objections, have taken testimony of experts on questions of infringement, and offered copies of two English letters patent, admissible, we apprehend, only on the questions of originality.

The plaintiffs have objected to the reception of these last in evidence, on the ground that they are not responsive to any issue in the cause, and also have objected to the testimony offered as to infringement on the same grounds. These objections are insisted upon, and the Court is respectfully asked to exclude the same.

Wyeth *vs.* Stone, 1 Story, 284.
Orr *vs.* Merril, 1 Wood & Minot, 378.
Agawam Co. *vs.* Jordan, 7 Wallace.

The plaintiffs protesting and reserving these objections, that infringement is not an issue under the covenants of the agreements on which the bill is founded, have taken testimony on this subject, *de bene esse*. Harvey Waters, p. 44, ans. 6, and Wm. C. Hibbard, p. 39, ans. 6, state clearly that there is in *R* the same substantial combination of elastic rubber covered rollers, pressed together by adjusting springs, which is to be found in the Allender machine, and which enables the machine to operate usefully as a wringing machine; and that although there are other important parts in Allender not found in D or R, this combination is found. The infringement then evidently appears by a comparison of the two machines.

The resemblance thus ascertained, the inquiry arises whether this comes within any of the claims of the Allender patent.

The fifth claim of the reissued patent, p. 47, is for "Rollers for washing or wringing machines made of or covered with vulcanized rubber or any

other elastic substance or compound impervious to water, when used in combination with adjusting spring or springs."

This seems distinctly to include the resemblance which the witnesses have found between the plaintiffs' and the defendants' two machines.

It will be noted that this claim is not for covering rollers with rubber, nor for the internal structure of a rubber covered roller, nor is it confined to John Young's rollers, as described in his reissued patents, but it relates to all wringing rollers, when imperviously rubber covered, as one element; the other element is adjusting springs bearing on the journals of the free roller.

He does not claim the invention of either of these elements; he does claim the bringing of them together, their combination as his invention, the joint action of the two elements producing a peculiar mode of operation, the wringing of an irregular section of cloth equally at the same moment as it passes between the rollers, which is a novel and valuable improvement. The mechanical idea is counterbalancing the elasticity of rubber covers by the varying pressure of elastic springs bearing on the journals of the free roller, forming a self-adjusting mechanism to wring varying thicknesses of cloth passing through the rollers.

There can be no doubt that this is all found in the two defendant machines equally, the adjusting springs regulating the yielding of the elastic rubber covers, to the clothes passing between them, precisely as in Allender's.

John Allender made two notable inventions in this machine. An improvement on the old rubber roller, by enlarging the degree of its adjustability beyond the limit of *the thickness* of the rubber cover, through means of an internal cavity covered by a spring; the other, a mode of controlling the action of rubber covers in wringing-rollers by adjusting springs bearing on their journals; thus compelling the rubber to imbed the clothes passing through, and wring an irregular section equally.

Although rubber-covered rollers were old, this combination was new, and the counterbalancing action between the covers and springs were the same whether any old or the internal construction of the roller was used, as it depended on the flexibility and elasticity of the rubber of

The language of the fifth claim does not require that the element described there should be the "improved roller," as a whole which forms the subject of the first claim, and is sufficiently held thereby in any com-

bination. When Allender describes that to make the new he cuts away from the centre in length of the old under roller, and covers the hollow thus formed with a spring, preserving the cylindrical form of the interior coil, he describes what the old was without his improvement, so that the language of the claim may properly relate to both forms, provided they are clothed with impervious rubber covers.

The defendant desires to use the combination of the fifth claim, on the pretext that he does not use the improved hollow centre roller described in the first claim. The law of combinations has been somewhat explored.

In Foster *vs.* Moore, 1 Curtis, 293, it was held, "if one of the elements of a patentable combination is capable of being improved without losing its identity, such improved combination would still be an infringement."

In *Eames* v. *Godfrey*, 7 *Wallace*, 78, the Court say, "Eames had a right to use any of the parts in Godfrey's combination if he did not use the whole; and if he used all the parts but one, and for that substituted another mechanical structure substantially different in its construction and mode of operation, but serving the same purpose, he is not guilty."

In 1 Curtis, Judge Curtis had a case where one element was a complicated tool or machine in itself. It was much the same in 7 Wallace. Each Court evidently intended that colorable changes or sub-elements not affecting the construction and operation of the part in which they were made, as an element of the combination with the other parts of the combination, do not destroy the identity of the combination.

No difference exists between substantial similarity and a degree of modification.

1 Clifford, 620.
2 Clifford, 505.

I cannot, therefore, think that the Court, seeing that the whole substance claimed by us in the one part, together with the other part, is imported into this new machine in the same working relation and combination as before, would consent that colorable alterations or subtractions of features of the described first part, which do not affect the operation of those working elements of the part whose combination alone is claimed with the second part, should deprive the inventor of protection

for the invaluable combination of rubber-covered wringing rollers and adjusting springs, first made known and put in use by him.

There is no decision of this Court which implies that the invention of a useful combination does not give as sacred a right of property as the invention of a machine; and I submit that whether the Court view the inquiry in construing our fifth claim as limited to the combination of wringing rollers having rubber covers and adjusting springs in a wringing machine, irrespective of the form and construction the unclaimed parts of the rollers may have, or examine the modes of sub-construction indicated in the specification in that connection, it is equally clear that all we cover by the fifth claim is found in the defendants' machine.

A word on our specification: so scrupulous have the owners of this patent always been to avoid any appearance of enlarging the invention of John Allender, that they have left all the verbal imperfections of the original specification untouched, and only altered, in the reissues, the claims. The drawings and model are those John Allender filed unaltered.

The defendant, however, undertakes to establish a construction of this claim which shall exclude this resemblance from the scope of our patent.

Mr. Treadwell, their witness, says that in the organization of the Allender machine, besides the springs bearing on the roller, there are adjusting screws to regulate the tension of these springs at the pleasure of the operator, and that if you removed these screws there would be no tension on the springs, and consequently the rollers would have no pressure on them; and that in the use of mechanical language he should consider an adjusting spring to be one capable of being adjusted, that without set screw or adjusting screw no such effect can take place on the springs in Allender's machine, and therefore he should understand the adjusting spring named in the John Allender fifth claim as a different device from defendants' springs, which have no screws or equivalents or other means for adjusting them, and cannot consequently be termed "adjusting springs" in their combinations.

A construction of our claims based on this view of the meaning of the terms used, would make the fifth claim mean the same thing exactly as the sixth claim, and be senseless. Such a construction will never be presumed by a Court. The patentee, it is to be presumed, meant to distinguish between the combination named in the fifth and that named

in the sixth claims. Even Mr. Treadwell says, p. 78, that he considers this a sub-combination of that one of which the parts named in the sixth are the main combination. In our view, the fifth claim excludes the idea that the screw shown in the drawings shall be an adjusting screw instead of including it, as the spring performs an adjusting function itself when the machine is in use. The meaning is perfectly sensible, and each claim has by this construction a distinct field.

The definition which Mr. Treadwell gives of an "adjusting spring" is not confirmed by either Mr. Hibbard or Mr. Waters, who are veteran experts.

Mr. Waters, p. 45, says the defendants' springs are "adjusting springs," and the same mode of operation as plaintiffs'; and repeatedly in his sixth answer styles the plaintiffs' and the defendants' springs as "adjusting springs," independent of any set screw.

Mr. Hibbard, p. 39–40, last sentence in his sixth answer, says: "*R* has the same substantial combination of elastic rollers pressed together by adjusting springs that is to be found in Allender."

Mr. Baldwin, the second expert of defendants', does not sustain Mr. Treadwell. At p. 73, cross answer 16, he says the springs of plaintiffs' perform the same duty of compressing the rollers as in D and R; but he at no place uses the term "adjusting spring," or attempts to define one. And his cross 17 answer he claims as the only difference between the springs of the two machines that the special spring has not sufficient limit!! a discovery no practical operator on wringing machines has yet made.

The expert testimony therefore stands two to one against Mr. Treadwell's view of the use of the term or its definition in mechanics, and sustains the correctness of our view, that the springs in the defendants' machine, as well as in our machine, are known in mechanics as "adjusting springs," regardless of whether a set screw is attached or not. In the ordinary use of language, in mechanics as well as in literature, the definiteness of the fifth claim is established; the infringement of the defendant upon it appears evident.

REISSUE.

The defendant corporation sets up in its answer an allegation that the surrenders by the former owners of this patent, Bailey, Cook & Cook, were made with an intent to claim things invented before Allender, and to expand the claim to cover all that has been or may be made to effect the same purpose. It does not allege that they succeeded in such efforts; and in the testimony no witness is examined on the subject; no effort made to displace the decision of the Commissioner on this point.

The plaintiffs object, that under the covenants of the agreements A and B this subject is not open as matter of defence. Disregarding this, the defendants have put in the record of proceedings at the Patent office on these applications for a reissue, notwithstanding our objection to its competency. The decision of the Commissioner, allowing a reissue, is conclusive where there is no allegation that any fraud was practised on him, or any error of law made by him. We are sustained also by the opinion of the Circuit Court in this cause. That they could not discover any evidence of fraud in the record; see also Rubber Co. *vs.* Goodyear, 7 Wallace, 797.

The defendants offered in evidence two English patents, one granted to Jessop and one to Underhill, which we objected to as not competent under any issue in the cause. It may be that the defendants suppose them competent under the allegation of their answer last above referred to, but the authorities heretofore cited, — 1 Story, 284; 1 Wood & Minot, 378, — require that matters affecting originality must be set out in the answer with the distinctness required in the § 15 of the act of 1836. Agawam Company *vs.* Jordan, 7 Wallace, 583. No prior use or invention of the things claimed as new by us is set out in defendants' answer. Nor is notice given us that they deny the originality of any substantial or material part of the things claimed as new in our patent, and no information of the persons who had knowledge, or the places where used, or of any patents in foreign countries anterior to the application or invention of John Allender. We claim that the Court will not sanction the irregularity of this testimony, but will sustain our objections to its competency and refuse to look into it. We have consequently taken no testimony as to the date of our invention.

Saving these objections, we submit that the two English patents, — Joseph Jessop, sealed May 4, 1857, and William Scott Underhill, dated May 25, 1857, and sealed November 20, 1857, — are each plainly to be distinguished from the plaintiffs' patent. Jessop's has no rubber-covered rollers at all; the rollers were wood or metal, and consequently there is no combination between the adjusting rubber springs and set screws which he describes and a rubber-covered roller. He does not touch the plaintiff.

Underhill, however, does describe a rubber-covered roller, which we shall comment on, but he does not describe any adjusting springs to bear upon the journals of either roller. On the contrary, referring to the mode of using his rollers, he says, p. 92, line 17: "The usual adjusting screws being retained to regulate the horiontal position of the rollers," this is all the description he gives of the machine he proposed, and directly negatives the idea of any springs having been contemplated or patented by him in connection with rubber-covered rollers.

We might stop with the fact that neither of these patents describe our machine. Nor does either of them describe a useful or practical machine.

Rollers covered with India rubber in strips, and used in a machine for washing and wringing without springs were patented in 1848, by John Young, in the United States. The necessity of so covering the shaft that imperviousness to water as well as elasticity should be secured did not occur to him. Underhill seems to have sought the resiliency of rubber as did Young before him, but he was equally obtuse on the point of imperviousness in the cover; indeed, p. 92, he describes a series of rubber rings strung on to the shaft and secured in some blind way; he also speaks of a tubular cover, but he distinctly says that he *prefers the rings*, and gives no indication of *how* he would fix a tube on a spindle, or what its thickness should be, or that he ever had made the experiment with a tubular cover; his language indeed shows that he had not, as he says that *the rings* "will probably be found the best in practice."

The necessity and consequence of an impervious mode of covering is described by Hibbard, p. 43, ans. 7, and is so well recognized now, that since John Allender's method came out, no other covers have been used in wringing machines.

Underhill did not know it, or his patent would not have given wrong

advice. Allender was the first to discover and practically apply imperviousness to covers of wringing rollers. His specification describes a cylindrical covering; this model shows one. We have not proved the date of his invention, as it was not in issue under the pleadings. The defendant, however, showed by Mr. Bailey, pp. 24–5, that in 1858 he had one of these Allender wringing machines at his house, and had known of Allender's experiments on wringing machines *for several years.* Underhill's patent was sealed Nov. 25th, 1857. They did not show the date of Allender's application, thus their own testimony negatives any idea that this date of sealing was prior to Allender's supposed invention, and fails in sustaining the affirmative, incumbent on them on such an issue.

Tolson's Patent, 6 De Gex. M. & G. p. 422.

It is clear Allender first introduced the *impervious* cover to wringing rollers, and made practical ones. Treadwell, p. 81, ans. 8, admits that no mode of fastening the tube on is described by Underhill. Hibbard, p. 61, ans. 7. says "there is no means described for connecting the rubber with the spindle, and without such means the rollers would not be practically useful in my opinion." A rubber roller can hardly be said to be *invented* when the workman is told to make one without telling him that the cover should be fastened on the shaft and not be loose; nor without telling him how to fasten it.

The defects of Underhill so far as an impervious rubber cover is an element of the invention, and his not teaching how to make a roller with one, are apparent. Underhill was no further advanced than John Young was, nine years before him.

What fullness of description is required in a foreign patent? In *Parker* v. *Stiles*, 5 *McLean*, 61, Justice McLean held as to a description in a public work, that it must be full and precise to enable a mechanic to construct the machine, and must be in all material respects like that covered by the plaintiffs' patent. No reason is known why this certainty should not also exist in a foreign patent.

The testimony of Hibbard, p. 43, ans. 7, sustained by Treadwell's admission, p. 81, that there is no special mode of fastening the rubber on the spindle, conclusively shows that Underhill did not describe and patent a mode of making a roller with such a tubular rubber cover, impervious to water as is shown in the model and drawings, and specifi-

cation of John Allender. What he says as to a tubular cover is a mere suggestion, not descriptive of a complete roller. 7 Wallace, 603. Inspection of the patent will show that Underhill does not describe either element of Allender's combination, nor does he describe or show the combination of the fifth claim.

Allender on the proofs was the first to show how an impervious rubber tubular cylinder cover could be fastened on a roller for wringing purposes, so as to be practically useful; and he showed this by words, drawings and model, — before any one else, in his patent, and he first used such practically, in a wringing machine in combination with adjusting springs, — and first taught that such cover was more useful than rings or strips of rubber or any other form of rubber for wringing roller purposes.

The defendants also seek to attach the patents of Jessop & Underhill together, and in that way to construct a new machine which they claim would embody the working features of plaintiffs. This is clearly incompetent as a mode of attacking the patent of another. See Brooks v. Fiske, 15 Howd. 227. Judge McLean's opinion on Fr. patents there introduced. The plaintiffs' fifth claim is a combination of working parts not described in either Underhill or Jessop; the working parts are not there claimed as novelties, their combination is. The defendants, to affect us, should show this very combination patented prior to our application; but on their proofs no one has done this, nor described the mode of making such a combination. Jessop did not describe any rubber rollers whatsoever, nor does he appear ever to have seen any.

The machine of John Allender, on the contrary, contains the first practical way of making that combination ever given to the public any where. The records of our own and foreign countries have been industriously searched, and no trace is found that any human mind ever contrived, or hands executed this combination, before John Allender's.

Referring to his patent, p. 46, this includes the standards to sustain the rollers, and a guide to conduct the clothes between the rollers, and to serve as a shield to keep them from approaching too near the ends of the rollers and being entangled in their journals, or caught between the rollers and the standard, thereby getting torn or discolored by contact with the iron work.

This guide, as a mode of preventing the clothes from becoming

entangled, is entirely novel in the Allender patent, and material in the organization of a practical and useful wringing machine. There is nothing like it to be found elsewhere. It is part of the workmanlike mode of constructing the machine shown in Allender's specification. It is not found in Jessop, nor is it found in Underhill.

In the defendants' machines, D and R, each has a shield or guide organized for the objects and in the manner first taught by John Allender in this connection to the world, and which they could not have learned from putting together the Underhill and the Jessop machines, as neither the one nor the other contains the method.

The incongruity of the Jessop and Underhill machines, described in the specifications, forbids their being put together. Jessop has an unelastic roller and elastic springs. Underhill has an elastic roller and no springs at all; he says he relies on set screws to adjust with, but otherwise describes no machine at all. Allender differs from both. He first combines elastic rollers with elastic springs over their journals, and makes and describes a practical and useful wringing machine, including this combination.

And the defendant uses, as already shown, many important details of his construction, which as well as the features of the fifth claim, are not found in either Jessop or Underhill.

The plaintiffs, relying on the fact that the issue of originality was not presented in the answer, have not taken any testimony on that subject; but under leave of the Court they are able to prove whenever the issue shall be presented in the case, that John Allender's invention preceded in date, by a considerable space of time, the patents of Jessop and of Underhill, and even their applications for letters patent.

The Court will observe, from the agreements and the testimony of Mr. Bailey, that we have many licenses under similar agreements to this with defendant, and that a construction of our rights and remedy under A and B is of great moment to us. The plaintiffs append to this argument a printed copy of the opinion of the Circuit Court.

All which is respectfully submitted.

CHARLES LEVI WOODBURY,
M. E. INGALLS,
For Plaintiffs.

Circuit Court of the United States.

DISTRICT OF MASSACHUSETTS.

CLIFFORD & LOWELL, J. J.

BAYLEY WASHING & WRINGING MACHINE COMPANY,

vs.

EUREKA CLOTHES WRINGING MACHINE COMPANY & AL.

LOWELL, J. — The bill alleges that the complainants are a corporation existing under the laws of Rhode Island, and having their place of business in that State; that the first-named respondents are a corporation organized and doing business in Massachusetts, and that the other defendant, Mr. Rindge, resides in Boston; that the complainants are owners of a patent issued in January, 1859, to John Allender, for a new and useful improvement in wringing machines, and since twice re-issued; that the defendants were notified of the patent and assignments, and negotiations were had, and on the twenty-fourth day of March, 1866, the parties made an indenture by which the defendant company were licensed to manufacture machines according to, or substantially like, a sample referred to in the indenture; and said corporation, on their part, covenanted to keep accurate accounts of all wringing machines made by them, and that their books should always be open to the inspection of the complainants, and that they would render an account of such manufacture on the fifth day of every month, and pay to the complainants fifty cents for each machine made during the preceding month; that a second indenture was made on the same day regulating the prices at which the machines should be sold by both parties; that the defendant company soon after made one payment under the agreement, but have since neglected and refused to pay and to account, though they have continued the manufacture. It prays for an account on oath, and for an injunction until, &c.

The answer of the Eureka Company admits the patent and re-issues, but denies that the patent was for an improvement in wringing machines, and avers that it was for an improved roller for expressing water from clothes; and avers that the re-issues were obtained fraudulently for the

purpose of claiming matters not invented by John Allender. It denies the execution of the indentures and the authority of either corporation to make them; denies that the defendants ever deposited any sample machine, ever made any payment, or any machine containing any invention or improvement, or any part of any invention or improvement made by said John Allender, or mentioned, described or claimed in any patent granted to him, or to the plaintiffs, assignees or either of them.

It will be seen that the answer does not attack the validity of the original patent, but only of the re-issues, which, it avers, were obtained by fraud for the purpose of claiming a monopoly of inventions not made by Allender. We do not discover in the record evidence of any such fraud in the re-issues, and under the pleading we cannot inquire whether John Allender was the original and first inventor of what is described and claimed in his patent, but must assume him to have been so.

In the same reason we do not pass upon the interesting question which was much discussed, whether these defendants are estopped to attack the patent. No doubt a mere licensee who was unacquainted with the title may be permitted to show that the patent is wholly void; and on the other hand, a person who contracts with a full knowledge of all the facts, and knowingly takes whatever the patentee can give, may be bound by his covenants, notwithstanding a future failure of title. But none of these questions arise in this case.

It seems to the Court that the complainants have made out as matter of fact, that the indenture was made, as alleged. The evidence of the authority of the defendant Rindge, to make it on behalf of the company, is wholly circumstantial, but is sufficient to raise a fair presumption of subsequent ratification at least, if not of previous authority. Whether the exhibit D is the sample machine referred to in the indenture was much disputed, and is not very material, because the evidence tends to show that a machine like the exhibit was intended by the parties, and it is not a condition precedent to the right of the complainants to call for an account, that the sample machine should be deposited as agreed. The machine which the defendants admit that they have made, appears to be identical with the machine referred to, in the contract of the parties, in all respects in which it operates as a wringing machine, though it differs in the mode of its attachment to the tub or vessel in which the clothes are to be placed.

4. Such appointment may be inferred or implied from his being held out as such agent by the officers of the corporation, or from the recognition of his acts as agent by the directors or by the corporation.

2 Kent's Com. 288.
Story on Agency, 652.
Bank of U. S. *vs.* Dandridge, 12 Wheaton, 64.
Randall *vs.* Vanvechten, 19 Johns. 60.
Bank of the Metropolis *vs.* Guttschlick, 14 Peters, 29.

5. It is not necessary that authority from a corporation to its agent to contract in its behalf, should be given at an assembly of the directors; but their assent may be obtained separately.

Bank of Midlebury *vs.* Rutland and Washington R. R. Co., 30 Vermont, 159.

6. Knowledge and concurrence of stockholders in all that is done is sufficient authority to its agents.

Miller *vs.* Washington R. R. Co., 36 Vermont, 475.

7. A corporation becomes bound for the unauthorized acts of its agent by a subsequent ratification, the same as a natural person.

See cases before cited, and
Essex Turnpike Corporation *vs.* Collins, 8 Mass. 299.
Gordon *vs.* Preston, 1 Watts, 385.
Curtis *et als. vs.* Leavitt, 15 New York, 49.
Hoyt *vs.* Thompson's Ex. 19 New York, 207.

8. This ratification may be inferred from the silence of the corporation upon receiving notice through its proper officers of the acts of one assuming to act as its agent.

Gordon *vs.* Preston, 1 Watts, 385.
Curtis *et als. vs.* Leavitt, 15 N. Y. 49.
Hoyt *vs.* Thompson's Ex. 19 N. Y. 207.
Frothingham *vs.* Haley, 3 Mass. 70.
Shaw *vs.* Nudd, 8 Pick. 9.
Thayer *vs.* White, 12 Met. 343.

9. Notice to an agent in the transactions for which he is employed, is notice to the principal. This rule applies equally to a corporation, as to a natural person.

Angell & Ames on Corporations, § 305, and cases there cited.

10. The directors of a corporation are its authorized agents, and notice to them in their official capacity is notice to the corporation.

Angell & Ames on Corporations, § 306.
Burrell *vs.* Pres. and Directors of Nahant Bank, 2 Met. 163.
Sargent *vs.* Webster, 13 Met. 497.
Washington Bank *vs* Lewis, 22 Pick. 32.
Bank of the U. S. *vs.* Davis, 2 Hill, 451.

I have briefly stated the principles of law which are to govern in this case, and now ask your attention to facts supporting our first proposition, viz: that Mr. Rindge had the proper authority from the defendants to execute these papers.

Mr. Rindge, in the papers themselves, stated that he was duly authorized to execute them. He was president, treasurer and a director in the defendant company, and owned nearly one half the stock. See Rindge's testimony, pages 62, 64, cross-ints. 6 and 26. Mr. Rindge in his answer, page 15, says that he consulted Mr. Tower and Mr. Alexander before signing these agreements, and signed with their advice. Mr. Tower says he assented. Page 74, int. 8. Tower, on same page, int. 6, says he was a director at the time, and Rindge, on page 15, says that the whole subject had been referred by the Eureka Company to Mr. Tower to decide upon the validity of Bailey's claim. Tower also owned fifty shares of stock in the defendant company. Rindge, page 65, cross-int. 37.

Mr. Alexander was the general agent of the defendants, and a stockholder.

Page 59, int. 9; page 65, int. 38.

Lyman says that Rindge stated that he was the agent of the defendants, and Tower assented.

Page 36, int. 10.

I submit that a stronger case could not be shown except by the records of the vote itself.

The defendants evidently were satisfied of the strength of our facts for they call Mr. Rindge, who swears that when he executed these papers, he informed us that he had no authority to do so, but thought the company would ratify his act. See page 69. This statement of the witness is not made by him in answer to any interrogatory, but is volunteered by him after the cross-examination was closed.

We object to his testimony for the reason that having executed these papers in which he declares himself duly authorized to act, he is estopped from contradicting them.

See Cutter *vs.* Dickinson, 8 Pick. 385.
Parsons *vs.* Gloucester Bank, 10 Pick. 533.
Chapman *vs.* Searle, 3 Pick. 38.

We further say that this statement of Rindge is not true. We call Bailey, who says he heard no such statement. Page 38, int. 2. In considering this question, we must remember that Mr. Rindge says that he made the same statement before signing the Metropolitan papers and repeated it. Rindge's testimony, page 63. The testimony is conclusive that he made no such statement, and if he is proved false in one part of his statement, the presumption is against him on the other.

Mr. Lyman says that Rindge affirmed in the strongest manner that whatever he did would be binding upon the Eureka Co. See page 36. Mr. Russell says no such statement as Mr. Rindge swears to was made in his hearing. Page 37.

The defendants finding it was getting rather warm for Mr. Rindge, called Mr. Alexander, the agent of the defendants. He had previously testified, but had not said a word about this statement of Rindge's. They undoubtedly did not consider him an available witness then, but after having been present and listened to all the testimony on both sides, they considered him competent to testify upon this point.

If you will examine his testimony and that of Mr. Rindge, you will find that they are word for word the same. See pages 60 and 66. It is rather remarkable that they should each of them remember the exact words used and give them precisely alike, nearly two years after the occurrence took place.

They next call Mr. Tower, who says he was present when the papers were signed; but as to this, he is contradicted by Mr. Rindge, who says that Bailey, Russell, and Alexander, were present. Page 63, int. 14.

Tower also says that Lyman was present. Page 75. While Lyman and Rindge both agree that he [Lyman] was not present. Pages 55 and 36, 63. If we suppose that Mr. Tower made a mistake in his day and referred to the conversation of Saturday, he is entirely unsupported, for neither Mr. Rindge or Mr. Alexander say that such a statement was made to Bailey on Saturday. In either event his testimony is so contradicted that it is entitled to no weight whatever. The defendants have then only the statement of Rindge, who is supported by Alexander, who testifies under very suspicious circumstances.

For the plaintiffs, we have Mr. Bailey and two disinterested witnesses, Mr. Russell and Mr. Lyman. But the strongest evidence in our favor is the common-sense view of the matter. If we take Mr. Rindge's own story, we must believe that he acted very improperly, solemnly averring on paper that he was the authorized agent of the defendants, and at the same time orally saying that the statement was untrue. We must go still further than that. We must consider Mr. Russell a very poor lawyer, and Messrs. Lyman and Bailey very poor business men — the first to allow his client to accept an important agreement signed under the circumstances that Mr. Rindge says it was, and the latter to accept such documents. The story is too absurd. We could not believe it if we wanted to

If your Honors shall find that Mr. Rindge had the proper authority, and that these agreements were properly executed, then there is an end of the case; but for greater certainty we go further and say that the defendant company has ratified these agreements since their execution

I have cited authorities that a ratification may be presumed from silence. In this case Mr. Rindge assumed to act as the agent of the defendants. Of this they had due notice through two of their directors, their president, treasurer, and general agent, all of whom were present on the business of the corporation. If the company did not intend to be bound by his act, they should have given us reasonable notice, but there is not a particle of evidence in this case going to show such notice, while there is plenty of evidence showing that we gave them notice that we considered the agreements binding. We sent them a receipt for their tariff money in an envelope directed to the Eureka Company. Page 29, int. 8. We also sent them blank forms for them to make their returns on every month. Page 33, int. 20 The first time that we

received notice that the defendant company refused to be bound by the defendants' act was when their answer was filed, but there is no evidence supporting their allegation.

When Mr. Rindge was upon the stand, I called for the record of all the meetings of the directors and stockholders for 1866. They are annexed, and marked Exhibits T and U. See p. 57.

By these records it appears that the directors' meeting was held the day after Exhibits A and B were signed; that Mr. Rindge, Mr. Tower and Mr. Alexander, were present. Yet there is not a scrap of writing going to show a repudiation of these agreements. The same remark applies to the stockholders' meeting in June. I then asked Mr. Rindge, when the Eureka Company first repudiated his action in executing Exhibits A and B. The witness twists and turns, and says they never did, and the examination was adjourned; and the next week the witness adds, that they never did, as the company understood the agreement, and as he did!! See pages 67–8. I afterwards asked him when the defendant company refused to pay tariff under Exhibits A and B, because they were not properly executed. His answer is, that this question never came up till the present suit was commenced. See pages 68–73, 74, 75, 76. This last answer tells the whole story about this case; that is, that the defence of improper execution of the agreements A and B was conceived after this present suit was commenced, and was never thought of before, and this witness Rindge endeavored to adopt that theory as true until forced to admit the contrary by a persistent cross-examination. The facts show that Mr. Rindge, Mr. Tower, and Mr. Alexander, did all the business of the Eureka Company, and what they did the company never thought of questioning.

I have endeavored to show that, up to the commencement of this suit, the defendant company had not disavowed the act of its agent in executing the agreements. I desire now to call your attention to the testimony showing acts of the company, adopting and ratifying this act.

These acts are, the conversations of their agent with Mr. Bailey and Mr. Cook, representing the plaintiffs, and a payment of tariff under these agreements. It seems from Mr. Rindge's testimony, that Mr. Bailey agreed, as one of the considerations that the defendants would execute these agreements, that he would try to procure from his company a release to them of past infringements. Page 65.

Mr. Bailey testifies that Mr. Alexander, the agent of the defendants, came to Woonsocket two or three weeks after the agreements were executed, and requested that his company might be allowed to manufacture, free of tariff, what rolls they had on hand when Exhibits A and B were signed. Page 23, int. 21. See also Exhibit P, p. 57. Mr. Cook says, Mr. Alexander wished him to see Mr. Bailey and have him send a receipt in full for machines manufactured previous to their taking a license. Page 33, int. 11. I think it will not be denied, even by the counsel for the defendants, but what these acts of Mr. Alexander were within the scope of his duties as agent of this corporation, and that the Eureka Company through him were taking advantage of these agreements, and claiming the benefit of them.

We next produce a letter from the defendants, received by the plaintiffs, containing a check for fifty dollars, which the letter states was for tariff on a hundred machines, &c. See Ex. K, page 56. This payment and this letter connected therewith are conclusive upon the defendants. It was written and passed out of the hands of the defendants before this defence was conceived, and shows that at that time, the defendant company had no intention to repudiate the act of their agent; but, on the other hand, they intended to adopt it and claim the benefit of it. This testimony stands uncontradicted either directly or indirectly, and is not explained away by any evidence. Mr. Rindge in his answer says he has been informed and believes that it was paid under a special arrangement between Cook and Alexander; but we afterwards had both of them upon the stand, and they say nothing about this special arrangement, so we must conclude that Mr. Rindge had ascertained that his information was incorrect; his allegation is unsupported and is not evidence of itself, as it is stated on information and belief.

The evidence shows that the officers, and a majority of the stockholders of the Eureka Company, informed us that Mr. Rindge was the proper agent to execute these agreements; that as such agent he did execute them, that the corporation had notice of his act through its president, treasurer, agent, two of its directors, and by written notices sent to it through the mail. That it kept silence after such notice, and allowed us to consider the contracts binding. That they afterwards availed themselves of the advantages of this contract, and accounted to us for machines manufactured under the same, and paid us a tariff on

No objection is taken to the jurisdiction of the Court, and it seems to us to be a proper case for a Court in Equity. We find that the complainants have made out their case, and are entitled to an account from the Eureka Company, and to an injunction until the account is rendered and payment made.

We have not discovered the reason for making Mr. Rindge a party to the suit. C. L. WOODBURY, M. E. INGALLS, *for Compts.* J. B. ROBB, *for Respts.*